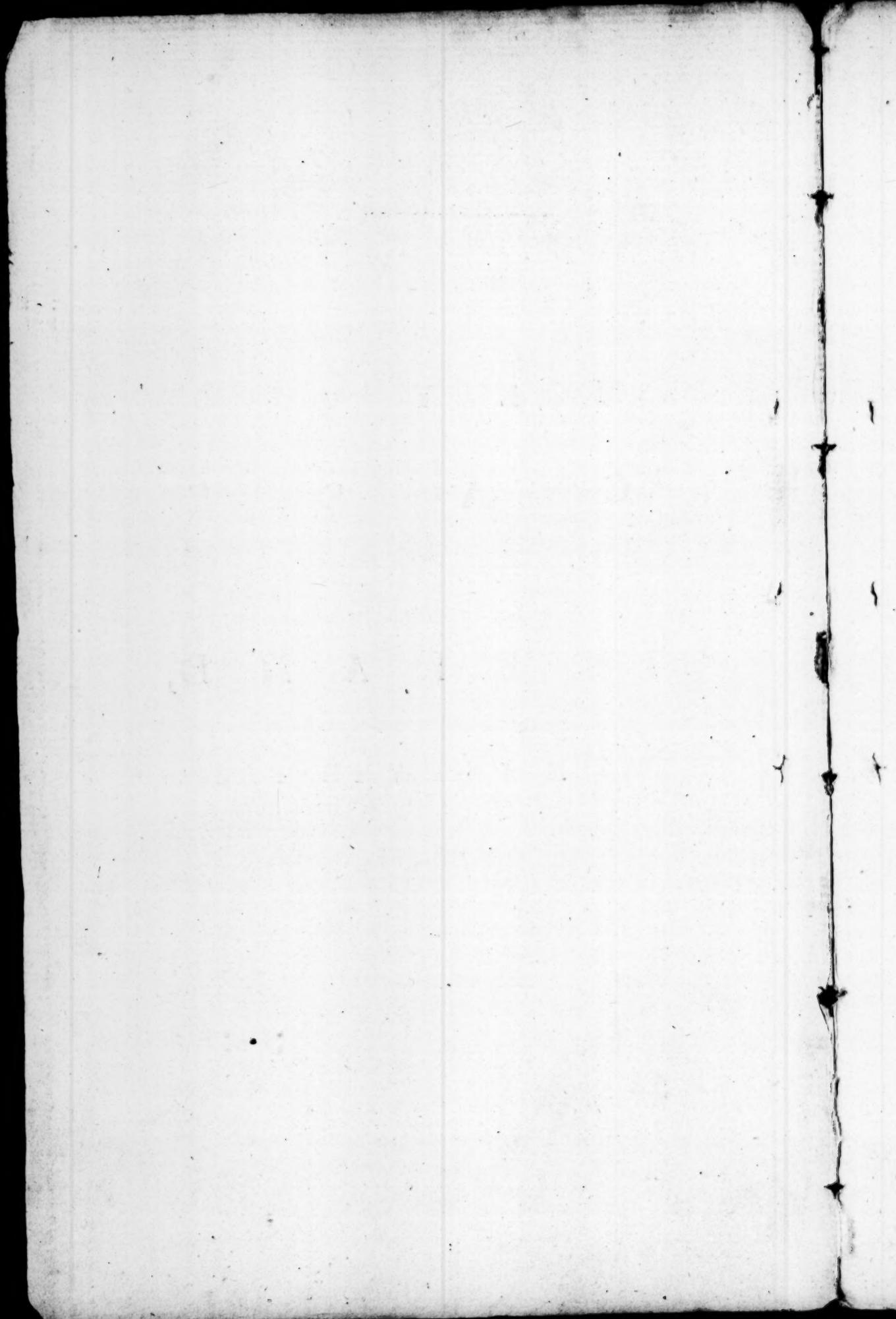


M O L L Y N E U X ' S
C A S E
O F
I R E L A N D,
WITH A NEW PREFACE.



THE
C A S E
OF
I R E L A N D
BEING BOUND BY
ACTS OF PARLIAMENT
IN
E N G L A N D,
S T A T E D.

BY WILLIAM MOLLYNEUX OF DUBLIN, ESQ;
WITH A NEW PREFACE.

L O N D O N :

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M D C C L X X .



P R E F A C E.

THE following Case of the Kingdom of Ireland, was published at a Time, when our Constitution had recently felt the healing Effects of the happy Revolution; the Sister Kingdom had been most miserably distressed amidst that Confusion, which the Biggotry of the deluded Followers of James had introduced, and great Occasion she had, for every Act of Friendship, which this Nation could shew; the Protestant Families had been stripped of their Properties, and forced to seek Refuge in this Country; they were received with Humanity, by many particular Persons, and Money was raised by private Subscription for their Relief; their Lands had been wasted, their Houses burned, and the whole Island thrown back, as to matter of Improvement, at least a Century; all this did the Irish Suffer in the Cause of Liberty, for it is beyond a Doubt, to those who have any Knowledge of that History, of the Advantages in Number, Intelligence, and other respects, derived to the English Army from the Irish Protestants; that

if they had joined their Forces with those of the Catholicks, the Kingdom might have been easily delivered up either to James or to Lewis ; they had taken a different Resolution : Descended from Ancestors, who brought with them the Manners, Customs, Laws, and Constitution of England, and communicated them to the wild ferocious Natives of Ireland, they were determined to support them.

At a Time when England was diffusing the Blessings of Liberty, to a prodigious national Expence, amongst the most remote People of the Continent, it must be matter of just Surprize to the Irish, that far from receiving Assistance from English Legislature, towards repairing the Damages they had sustained, they saw their Independence as a Kingdom, unjustly violated, their Trade wantonly restrained, and Mr. Molineux's modest dispassionate irrefragable Proof of the Rights and Liberties of his native Country, profanely burned by the Hands of the common Hangman.

We live in an Age, where in one Particular, the Revolution continues still to operate, for the Crown of these Realms remains as yet under parliamentary Establishment, in a Family, which, although not so near in Blood as other Families to the abdicated Race, was nevertheless preferred, because they were Protestants, because they were of small continental Importance, of known Moderation, and therefore more likely to be contented with the reasonable Share of Power allow'd by our

our Laws ; Ireland, from the very same Motives with England, recognized the present Family by solemn Act, totally distinct from that of England, and had Reason to hope for a pure uninterrupted Enjoyment of civil Liberty, under such worthy Patrons.

That it has not been the general Sense of the People of England to oppress Ireland, is most certain ; the English breathe a Spirit of Freedom, they are naturally brave, generous, and just ; they would endeavour to make all Mankind free ; and who from the workings of English Administrations, shall conclude to the whole People of England, will conclude unjustly ; for excepting a Part of Queen Anne's Reign, and that Part of the late War which was conducted by the Earl of Chatham, shew me who can, with all the boasted Liberty of England, when did the national Sense and that of Administration, in any Respect coincide ; was it the English Nation that betrayed the Catalans ? Cut us off from any future cordial Friendship with the Dutch ? Endured the outragious Insults of Spain for a Number of Years ? gave Hostages at the Peace of Aix-la-Chapelle ? and bartered to private Avarice all the Advantages of the last glorious War ? would they Sacrifice, would they proscribe as Rebels, the brave unfortunate Corsicans ? would the English Nation oppress the Irish ? It is to the weak or wicked Councils of English Ministers that these Articles must be charged, together with that churlish

Policy, which will not permit Ireland to carry on Part of a Trade, the whole of which, England is confessedly unable to maintain.

An English Minister would move Heaven and Earth to corrupt a Majority in the House of Commons, and contrary to that Golden Rule of Politicks, which prefers the greater Part to the smaller, he would, in order to secure a single Member, the Circumstances of whose Estate may render it convenient to destroy the entire Trade of Ireland, readily Sacrifice so respectable a Part of the British Empire : To cut off the left Arm, in order to save a little Finger of the Right Hand from Amputation, would be strange in Surgery. Ireland has many unhappy Peculiarities in her political Situation, the chief of which seems to be, that she is a Kingdom without a King, for the Minister with an obsequious British Privy Council, has assumed the Power of putting a Negative upon the most salutary Laws; the Man who is not well acquainted with the Interest of Ireland, must surely be incapable of advising his Majesty concerning such Interest, as it stands in relation to that of the Commonwealth ; for it is unjust to say, that the Interest of England or of Scotland, requires that Ireland shall be treated in this or in that manner ; the honest Enquiry must be, which is the Manner from whence Advantage to the Inhabitants of that Kingdom, in common with those of our own, will arise ; none are so likely to be furnished with a Knowledge adequate to such Enquiry as

as the Irish ; the honest and sensible Part of their Gentry, are scarce ever seen at the British Court, those who reside here, having not only relinquished every Concern for the Liberties of their own Country, but stand foremost in the List of those, who Labour in the Destruction of our Liberties ; his Majesty therefore with regard to the true State of Ireland, is totally uninformed, which in Effect is not to be a King.

The Mind of every Monarch is not capable of comprehending the extensive Duties of his high Office, nor can the Heart of every Monarch resolve upon executing them ; William the Third was indeed born an Hero, and where Liberty was in Danger, the Rights not only of his own Subjects, but of the human Species to be asserted, no Hazard was too great, no Climate unlovely, no insolent Combination of his Subjects appeared terrible ; and had he outlived that tyrannical Leviathan, Lewis the 14th, Ireland might have reaped, some Part of the Harvest of his Leisure ; he probably would have given that Kingdom other Marks of being a Sovereign, than quartering upon her a Band of lazy, voracious, pensionary Sycophants.

Another Peculiarity in the Affairs of Ireland is, that they have an House of Peers, without a dernier judicial Power ; judicial Power, wherever placed must give Consequence, from thence may Prerogative draw at all Times sufficient Force without calling in Corruption to her Aid ; when Gracchus had deprived the Patrician Order of this Power, he looked upon it as sufficiently humbled, no wonder

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the Irish should sensibly feel so unnatural a Change in their Government; the Right of construing their own Laws, is founded upon the Principles of common Sense, because Vicinity and Intercourse carry the strongest Presumption of being acquainted with the Matter in Dispute, the Characters nay with the Right of the Disputants: I have seen as much Interest made by the Friends of the Appellant and Respondent, upon an Irish Appeal, as in the Lobby of the House of Commons, upon a contested Election; and in one Party, when his Adversary has been familiarly received in Public, by any Court Lord of notorious Influence, the lowest Dejection of Countenance; and yet when we consider, that Determinations in Law or Equity, depend not upon a Skill in Horse-racing, or a critical Knowledge of the Inns upon the Roads to Paris, Turin, or Rome; an indifferent Person, will be at a Loss to discover any Superiority in a British over an Irish House of Peers, as to Capacity of judging in Matters of Property. *Judex bonus juxta Leges & Jura pronunciat*, and we cannot suppose that British Peers, admitting them perfectly acquainted with their own Laws, can be so conversant with those of Ireland, where from particular national Circumstances, they, must differ from those of England, as the Peers of Ireland are, therefore not so competent Judges: but if it should be asserted, which seems not without Colour of Justice, that the Lords have no concern with the judicial Power further

further than the Formality of voting, and that the Lord Chancellor and Lord Chief Justice of the King's-Bench, have the Direction both of their Consciences and Opinions, the Officers correspondent to these at the other Side, having received the same Education, in the learned Profession with their Brothers in England, ought to be, and probably are as capable of giving Judgment in the last Instance; so that there can be no sufficient Cause for drawing such great Sums of Money from Ireland for the Prosecution of Appeals, unless the Affair is considered in a commercial Light, Justice, as a Material of Trade, and that the Ballance against Ireland must be preserved in this as in every other Article.

As to the House of Commons of Ireland, not one Essential of Independency of Legislature, remains to it, except that of raising Money; it is the last Privilege a People will give up, and a Minister ought to feel an uncontrollable Energy in himself, before he attempts an Injustice of such Poignancy. A Grant of the Supplies for a long Term, was very near passing during the Lieutenancy of Lord Carteret, which would have destroyed this precious Relique of Irish Constitution; in general until very lately the English Ministry, has carried almost every Question in the Irish House of Commons, and why Opposition has been more frequent than formerly, may I think be thus accounted for.—We plainly see the aristocratical

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aristocratic Part of our Constitution gathering Strength every Day, the Consequence of which has been, that the Dignity of national Representation is sinking apace; the Lower House is disgraced by an Admission of obscure indigent Dependents upon the Nobility, who, before their Introduction to Parliament, owed perhaps the Dinner they consumed, and the Cloaths they wore, to the Bounty of their Patrons; the scandalous illusory Evasions of the Qualification Laws, we all know, and the Retainers in old Times to the great Lords, supported at the Expence of these Lords but having no Voice in the Senate, were less noxious Animals, than the modern Friends (as they are pleased to call them) of our Grandees, who are fed upon the Vitals of the People, and hired to Vote away their Liberties: Legislature has been further debased, by an Admission, not of Merchants, for that respectable Character is at present scarce known amongst us, but of a Set of illiberal Wretches, who by Fraud, Contracts, Stock-jobbing, or a sordid Parsimony, have wrought themselves into Wealth; these purchase Seats in the House, under Protection of the Minister, and are prepared to do his dirty Work at half Price; before Representation had been consigned to such mean Hands, the Employments in Ireland, except a few very considerable ones, were unworthy the Acceptance of an English Member of Parliament, they were distributed amongst the Gentlemen of that Kingdom, and scarce any Thing was

was refused to Administration; but so great the Demand for them now at this Side the Water, such granting of Places and of Pensions, in Possession and Reversion, that the Natives seeing no Prospect of being gratified, are easily inclined to oppose our Lord Lieutenants, and Points are daily contested; the Cause here assigned is no great Compliment to Irish Patriotism, but it is something very like human Nature, depraved if you please, nor let it be forgotten, that whilst the Example of England is so near, it is scarce possible it shall be otherwise; if a Right to be bribed can exist at all, the Irish have a Right to be bribed by the Materials, which their own Country furnishes, prior to that of the English; and much more for the real Interest of England would it be, that Irish Pensions and Places were left as before, to the Members of their own House, their Effects were then but of small Extent, only to a Vote of Credit for the Crown, or to silence the Hue and Cry after some petty Larcener of the Treasury; but by the dark Minister of this Day, they are employed to a more dangerous Purpose, to support a mercenary Majority in the British Parliament, and under Cover of this Battery of Corruption, to sap the very Foundation of our Constitution; that this is his Scheme, is apparent from the cruel Treatment of the Americans; careless of the good Opinion of the collateral Branches of the British Empire, their Governments,

vernments, Revenues, Offices, are all employed to poison the Fountain of Legislature; this End once attained, how easy is it to vote the Irish, Americans, East-India Company, &c. to be Horses, Asses, and Slaves at his Pleasure.

There is another Cause, why far the future, more frequent Opposition is to be expected from the Irish to the unreasonable Requisitions of their Governors; the Rigour of Popish Biggery is softening very fast, the Protestants are losing all bitter Remembrance of those Evils which their Ancestors suffered, and the two Sects are insensibly gliding into the same common Interest: The Protestants, through Apprehension from the superior Numbers of the Catholicks, were eager to secure themselves in the powerful Protection of an English Minister, and to gain this, were ready to comply with his most exorbitant Demands; the Catholicks were alike willing to embarrass the Protestants, as their natural Foes; but awakened from this Delusion, they begin to condemn their past Follies, reflect with Shame on having so long played the Game of an artful Enemy, and are convinced, that without Unanimity, they never can obtain such Consideration, as may entitle them to demand with any Prospect of Success, the just and common Rights of Mankind.

Religious Biggery is losing its Force every where, commercial, and not religious Interests are

are the Objects of almost every Nation in Europe; Ireland, to France or Spain, would be a grand commercial Object, and I wish these Powers may never have an Opportunity to avail themselves of the united Discontents of the Inhabitants of that Island; if they should, I may venture to say, that no religious Scruples would binder them from guaranteeing to the present Possessors of its Lands all their Estates, without the odious Distinction of new and old Rights; and the Irish combined under the Protection of a fair equitable Alliance, with some powerful State, would give much uneasiness to any who should attempt to molest them.— For let Fancy present us but for a Moment, this Island we speak of, not inhabited by the Descendants of Britain, nor those who are blended with these Descendants, by every natural and civil Intercourse, not by Men who have or wish to have the same Interest, at worst no opposite Interest to that of Britain, ready to bring Increase to her Trade, and add Terror to her Arms; but let that Island be filled with a Race of ancient Irish, fierce, active, robust, patient of Hunger and of Toil, proud in being the Posterity of these Heroes who chased the prowling Danes from their Country, plumed as they were at that Time with repeated Victories over the prostrate Saxons; with a People whom nothing but intestine Broils, could have forced into

into an unequal Compact with any Nation whatsoever ; we may go farther, and admitt them to be strengthened by a Policy proportionably improved with that of their Neighbours, connected by Treaties with some great Power upon the Continent, as Scotland was with France, and adverse to this Kingdom, as are their Seas and Shores ; tell me from what Part of the Globe could this Island be so much annoyed ? Instead of being so rich a Jewel in our Crown, what a Thorn would Ireland be in our Side ? Tacitus has, many Ages since, delivered it as the Opinion of Agricola, that Ireland might have been conquered by one Legion and some Auxiliaries, and he adds it as the farther Opinion of his favorite Commander, that such a Conquest would be instrumental to the entire Reduction of Britain, because says he, the Britons beholding the Arms of Rome on all Sides, every Prospect of Liberty must vanish—idque adversus Britanniam profuturum, si romana ubique arma & velute Conspectu Libertas tolleretur.—If the Conquest of Ireland in that rude State, was of so much Importance to an Enemy, who was intent upon subduing Britain, much more convenient must it be now, abounding as she is in the Necessaries of Life, her numerous and commodious Harbours well known to all Nations, and rich in a Breed of Men whose worth is approved and acknowledged by every State in Europe, except that of Great-Britain.

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Commerce, as I said before, and the Desire of thereby procuring the Comforts of Life, are the ruling Principles of the present Age; Portugal, which as a State, owes its Existence to England, will not reconcile themselves to a Trade with us on Terms of Disadvantage; Luxury and bad Policy, which has raised the English Manufactures to an uncommercial Price, furnish no Argument why Portugal should be a loser; nothing should give a Superiority to one People over another in Trade, but superior Honesty, Industry and Skill; no Treaty can bind to the utter Ruin of either Party, for that would defeat the End of all Treaties, mutual Convenience and common Good: It is otherwise in Contracts between private Persons, these must be observed, although an Individual may be affected, because private Interest should give Way to that of a Community, which requires, that Contracts should be strictly performed; but in a Contract between two Communities, this Reason cannot hold, for there are Cases, when by a strict Performance, either one or the other will be reduced to beggary; nor is it impossible that Portugal, for that Reason is more cordially disposed towards France than England at this Time; and that England may soon look upon the Conquest of that Kingdom by the Spaniards, with the same Indifference as they lately have done upon that of Corsica by the French. I can affirm that Ireland, in the Year 1760, in the

midst of a bloody War, had not 5000 effective Men to defend her ; there are Seasons, when our Ministers seem to be fast asleep ; and I am persuaded, that the Encomiums of Montesquieu, upon the Wisdom of this Nation, was intended only as an Alarm to his own Countrymen ; he would make us more considerable than we really are, that they may become proportionably more attentive.

Hanover has cost England more Money in a Summer, than Ireland has done since the Reign of Henry the Second ; for in truth the English Adventurers, who bore the Expences of the Irish Wars, were fully reimbursed by fair Estates in that Kingdom ; there were Companies formed to carry on Conquests in them Days, as to carry on Trade at present : suppose then Hanover, which has the Happiness to be under the same gracious Sovereign with Britain and Ireland, suppose her, I say, to be neglected by her Elector, her ancient and fundamental Laws trampled upon, her Revenues idly dissipated, by a weak assuming oppressive Privy Council of this Kingdom ; would she bear it patiently ? or would she not seek Redress in the Friendship and Justice of other Powers ? Exterminations of an entire People, or a total Reduction to slavery, upon raising the Arm to resistance against Injuries, is not the Doctrine of this Day ; the Powers of Europe think themselves bound in Honour and in Interest to prevent it ; Interest, to the Disgrace of Monarchs,

Monarchs, I must acknowledge to be concerned, and it is well that even that is left to be a Counterpoise to lawless Force; if Corsica had presented an immediate Prospect of Advantage, equal to the Cost of defending it, the French would not be at this Time in peaceable Possession of the whole Island; but in Possession they are, which shews, that a People may change their Sovereign, and yet enjoy their Properties, Customs and Laws.

Blind Prejudice may dart her random Invectives against the Scottish Nation, but in my Opinion Scotland is the Soil of the Decii, more Self-Devotees to the Independency of Country has it produced, than any other whatsoever; an Enumeration would be tedious and useless, the Instances are recent; when ever the Gentry of that Kingdom have thought themselves neglected, their great Services suffered to go unrewarded, there never was wanting a Band of Heroes, who turned out for Redress; they have scorned the dull and unavailing Method of Petition, and of Remonstrance; the Apprehension of their crossing the Tweed in Arms, has generally proved a forcible Argument, with an indolent luxurious Neighbour; few indeed of their Nobles have been engaged, these stand sensibly aloof, but far from endeavouring to suppress the generous ardour of their Countrymen, they silently approve: What though some Thousands of these daring Vassals may be cut

off, yet are Honours and Wealth hereby secured to their surviving Friends for an ensuing Century; and I make no Doubt, if the Scotch should at any Time hereafter live under a Prince, less discerning than his present Majesty, less sensible of their extraordinary Merit, when they may be unjustly brought down to a Level with their fellow Subjects, and treated upon the same equal footing, but we shall find that the Breed of Self-Devotees is not extinct, and see their Demands gallantly made with Andrew Ferrara in Hand.

On the contrary, if the common People of Ireland, stung by all the Miseries of Want and Oppression, do but murmur a Complaint, if they assemble with the smallest Mark of Satisfaction in their Countenances, the loyal Gentry of the Kingdom are straight-way up in Arms; these dangerous Insurgents are suddenly crush'd; and within an Assizes or two, their Leaders, a wretched Priest perhaps with some other drunken Profligates, are either hanged or transported; the one People would secure every Advantage to themselves, by impressing upon their opulent Neighbour, a fear of being invaded and plundered; the other would conciliate our Friendship, by a fulsome obtrusive Surfeiting Affection for us, and an enthusiastic Loyalty for our King; which Method has been most successful, the many Blessings showered upon the Scotch, and the numberless Calamities of the Irish sufficiently declare.

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The honest People of England, must think it unjust to deprive the Irish of those Advantages which Nature has given, nay it is impious, for it is in Effect rising in opposition to the Awards of Providence ; they must think it cruel to obstruct the Trade of Ireland, without which, its common People must starve ; they must think it bad Policy to rob the Sons of the Gentlemen of Ireland of the Provisions they are intitled to, in Army Church and Revenue, because they are forced by suc^t Usage into foreign Countries, of which they have often given this Kingdom cause of painful Remembrance, to say we will do this or that, because Superiority of Number enables us to do so, is the Language of a Bravo without Honour or Reason on his Side : Nothing can be a stronger Mark of declining Liberty than a Desire to enslave ; Rome in her Days of Virtue, conquered but to civilize and make free ; when Liberty was but a Name, then did she wish to extend her Vassalage over all Nations of the World ; and if that should be the present design of England, very pleasing must it be to Ireland and the Colonies to see our Monarchs become absolute, and all his Majestys Subjects in the same equal Condition, then will the following Lines, which Corneille has put into the Mouth of Ptolemy, in the Tragedy of Pompey, be most apposite to the Times.

Rome tu serviras, & ces Rois, que tu braves,
& que ton insolence ose traiter d'esclaves,

Adoreront

*Adoreront Cæsar avec moins de douleur,
Puisqu'il sera ton maître aussi-bien que le leur.*

*You Britain soon shall own a Master's Power,
And these kind Friends who long your Pride
have born,
Whose Rights you trample, and whose Claims
you scorn,
Shall with less Grief to Cæsar bend the Knee,
When in their Lord, your Tyrant too they see.*

But the Supposition is disagreeable, it should not be indulged; the gloomy and desponding State-Physician, upon discovering some dangerous but common Symptoms, is too forward to give over his Patient;—Sævior armis Luxuria, is ever in his Mouth, and Liberty is no more; I cannot esteem thus meanly of our Constitution, her pristine Vigour, may not indeed be restored, but untimely Death may be prevented; and the most enfeebled State of Freedom, is better than Despotism; Wealth produces Luxury; the Poison of Wealth if diffused amongst the Individuals of a State, is so weakened by being divided, as to work its Effects slowly; but if the acquired Wealth of a Nation, instead of being thus scattered, falls by artful Management into the Hands of a wicked Administration, the collected Force of such Poison becomes irresistible, it produces untimely Death, Dissolution is hereby præcipitated—all the English Places of Power and

and Profit, in the Disposal of Ministry, could not procure such a Majority in the Houses of Parliament, as to make the Cause of Liberty quite desperate ; new Resources of Corruption were therefore to be found out, they were sought for in Ireland and the Colonies ; the Governments, the Employments, both Civil and Military, of these Countries, their Places and Pensions, were all brought in as auxiliary Funds of Corruption to those which Britain had hitherto in vain supplied ; and by this additional Force, has the Minister gained such a Superiority, that coming to a Division now, upon the most interesting Question in either House, is a mere Mockery ; in this manner the poor increase of Irish Wealth, the wretched Gleanings after the English Trader, is snatched from the unhappy People of that Kingdom, and converted by the chymical Operation of severe Revenue-Laws into those Pensions, with which the English Minister comes forth armed at all Points against Law Justice and Reason.

Yet why should we despair ? a generous and disinterested King, may give up these Adjuncts of Prerogative, which are now such a Curse to the People ; or by directing an Application of the Pension and Concordatum Money of Ireland to public Works, instead of pampering the unworthy, may relieve the distressed ; such a King, would have no Occasion for the Means of Corruption, because he will have nothing illegal

or

or unreasonable to demand ; but as this would be a most extraordinary and uncommon Blessing, who knows but the good People of England may, one Day or other, insist that no Placeman shall be intrusted with the Management of their Concerns in the great Council of the Nation, perhaps make it one of the Conditions of their Allegiance ; and when there shall be no Occasion for the Service of Pensioners, a Court may then look upon Pensions as useless, if a Nation will submit to the Incumbrance of purveying the Superfluities of a wasteful and luxurious Court, through superstitious Veneration for an ancient Form, the smallest Return they can expect is, that their Liberties may escape, without being either forcibly invaded, or insidiously undermined.

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T H E
C A S E
O F
IRELAND'S BEING BOUND BY ACT
OF PARLIAMENT IN ENGLAND,
STATED.

I Have ever been so fully persuaded of the strict Justice of the Parliament of ENGLAND, that I could never think that any of their Proceedings, which might seem to have the least Tendency to Hardship on their Neighbours, could arise from any thing but want of due Information, and a right State of the Business under their Consideration: The want of which, in Matters wherein another People are chiefly concerned, is no Defect in the Parliament of *England*, but it is highly blameable in the Persons whose Affair is transacting, and who permit that illustrious Body of Senators to be misinformed, without giving them that Light that might rectify them.

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I could never imagine that those great *Affertors* of their own *Liberties* and *Rights*, could ever think of making the least Breach in the *Rights* and *Liberties* of their *Neighbours*, unless they thought that they had *Right* so to do; and this they might well surmise, if their Neighbours quietly see their Inclosures invaded, without *expostulating* the Matter at least, and shewing Reasons, why they may think that Hardships are put upon them therein.

The Consideration hereof has excited me to undertake this Disquisition, which I do with all imaginable Diffidence of my own Performance, and with the most profound Respect and Deference to that august Senate. The present Juncture of Affairs, when the Business of IRELAND is under the Consideration of both Houses of the *English Parliament**, seems to require this from some Person; and seeing all others silent, I venture to expose my own Weakness, rather than be wanting at this Time to my *Country*; I might say indeed to *Mankind*, for 'tis the Cause of the whole Race of ADAM, that I argue: *Liberty* seems the inherent Right of all *Mankind*; and on whatsoever Ground any one Nation can challenge it to them-

* Bishop of DERRY in the House of Lords, and prohibiting Exportation of our Woollen Manufacture in the House of Commons.

selves,

selves, on the same Reason may the rest of Adam's Children expect it,

If what I offer herein seems to carry any Weight, in relation to my own poor Country, I shall be abundantly happy in the Attempt; But if, after all, the Great Council of *England* resolve the contrary, I shall then believe myself to be in an Error, and, with the lowest Submission, ask Pardon for my Assurance. However, I humbly presume I shall not be hardly censured by them, for offering to lay before them a fair State of our Case, by such Information as I can procure; especially when at the same time I declare my Intention of a submissive Acquiescence in whatever they resolve for or against what I offer.

The Subject therefore of our present Disquisition shall be, *How far the Parliament of ENGLAND may think it reasonable to intermeddle with the Affairs of IRELAND, and bind us up by Laws made in their House.*

And seeing the Right which *England* may pretend to, for binding us by their Acts of Parliament, can be founded only on the *imaginary Title of Conquest or Purchase*, or on *Precedents and Matters of Record*; we shall enquire into the following Particulars.

(1.) *First, How Ireland became a Kingdom annexed to the Crown of England? And here we shall at large give a faithful Nar-*

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rative of the *first Expedition of the Britons* into this Country, and King *Henry the Second's Arrival here*, such as our best Historians give us.

(2.) *Secondly*, We shall enquire whether this Expedition, and the *English Settlement*, that afterwards followed thereon, can properly be called a *Conquest*? Or whether any Victories obtained by the *English* in any succeeding Ages in this Kingdom upon any *Rebellion*, may be called a *Conquest* thereof?

(3.) *Thirdly*, Granting that it were a *Conquest*, we shall enquire what *Title* a Conquest gives.

(4.) *Fourthly*, We shall enquire what *Concessions* have been from time to time made to *Ireland*, to take off what, even the most rigorous Assertors of a Conqueror's Title do pretend to. And herein we shall shew by what Degrees the *English Form of Government*, and the *English Statute-Laws* came to be received amongst us: And this shall appear to be wholly by the *Consent of the People and Parliament of Ireland*.

(5.) *Fifthly*, We shall enquire into the Precedents and Opinions of the learned in the

the Laws relating to this Matter, with Observations thereon.

(6.) *Sixtly,* We shall consider the Reasons and Arguments that may be farther offered on one Side and the other; and shall draw some general Conclusions from the whole.

As to the first, we shall find the History of the first Expedition of the *English* into *Ireland* to be briefly thus: In the Reign of King *Henry the Second*, *Dermot Fitzmurchard*, commonly called *Mac-Morrog*, Prince of *Leinster*, who was a Man cruel and oppressive, after many Battles with other Princes of *Ireland*, and being beaten and put to flight by them, applied for Relief to King *Henry the Second*, who was then busied in *Aquitain*; the King was not then in such Circumstances as to afford him much Help: However, thus much he did for him, by Letters Patents he granted Licence to all his Subjects throughout his Dominions, to assist the said Prince to recover his Dominions. These Letters Patents are to be seen in *Giraldus Cambrensis**, who was Historiographer and Secretary to King *Hen. II.* and accampanied him in his Expedition into *Ireland*, and from him it is that we have this Relation. The *Irish Prince* brought

* *Giraldus Cambr. Hib. Expug. Lib. C. I.*

these Letters into *England*, and caused them to be read in the Audience of many People; beating up, as it were, for Volunteers and free Adventurers into *Ireland*. At length, *Richard*, Earl of *Strigul*, (now *Chepstow* in *Monmouthshire*) Son of Earl *Gilbert*, called *Strongbow*, agreed with him, to assist him in the Recovery of his Country, on Condition that *Dermot* should give him his eldest Daughter in Marriage, and his Kingdom of *Leinster* after his Death. About the same Time, *Robert Fitz-Stephen*, Governor of *Aberleſie* in *Wales*, agreed likewise with *Dermot* to help him, on Condition that he would grant to him and *Maurice Fitzgerald*, in Fee, the City of *Wexford*, with two Cantreds or Hundreds of Land near adjoining.

These Adventurers afterwards went over, and were successful in treating with the *Irish*, and taking *Wexford*, *Waterford*, *Dublin*, and other Places. Whereupon Earl *Richard Strongbow* married *Dermot's* Daughter; and, according to compact, succeeded him in his Kingdom.

A little after the Descent of these Adventurers, King *Henry II.* himself went into *Ireland* with an Army, in November, 1172; and finding that his Subjects of *England* had made a very good Hand of their Expedition, he obtained from Earl *Richard Strongbow* a Surrender of *Dublin*, with the Cantreds

treds adjoining, and all the maritime Towns and Castles. But *Strongbow* and his Heirs were to enjoy the Residue of *Dermot's* Principality.

King *Henry II.* landed at *Waterford* from *Milford* in *Pembroke*, and staying there some few Days, (says *Giraldus Cambrensis*) *Rex Corcagiensis* *Dormitius advenit ei, & tam Subjectionis vinculo quam fidelitatis Sacramento Regi Anglorum se sponte submisit.* *He freely swore Fealty and Subjection to the King of England.*

From thence he went to *Lismore*, and thence to *Cashel*, where *Dunaldus*, King of *Lymerick*, *se quoque fidem Regi exhibuit.* The like did all the Nobility and Princes in the South of *Ireland*.

Afterwards he marched to *Dublin*, and there the Princes of the adjacent Countries came to him, *& sub Fidelitatis & Subjectionis obtentu a Rege Pacem impetrabant.* Thus *Cambrensis* in his *Hibernia Expugnata*; and there he mentions the several Princes that came in, viz. *Macshaglin*, King of *Ophaly*; *O Carroll*, King of *Uriel*; (now *Lowth*) *O Rourk*, King of *Meath*; *Rotherick O Connor*, King of *Connaught*, and *Monarch*, as it were, of the whole Island; with divers others, *qui firmissimis fidelitatis & subjectionis vinculis Domino Regi innodarunt & in singulari Rotherico Conactiæ Principe tanquam Insulæ Monarchâ subditi redduntur univerfi, nec alicujus*

fere in Insula vel nominis vel ominis erat quæ Regæ Majestati & Debitam Domino Reverentiam, non exhiberet.

The same Relation we have from *Roger Hoveden* (Annal. pars poster. fol. 301.) About the Kalends of November, 1172, (faith he) King *Henry II.* of *England* took Shipping for *Ireland* at *Milford*, and landed at *Waterford*, & ibi venerunt ad eum Rex *Corcagiensis*, Rex de *Lymerick*, Rex de *Oxenie*, Rex *Midiæ*, & fere omnes *Hiberniæ* Potentates. And a little afterwards, in the same Place, speaking of King *Henry* the Second's being at *Waterford*, ibidem venerunt ad Regem *Angliæ* omnes Archiepiscopi, Episcopi, & Abbates totius *Hiberniæ*, & receperunt eum in Regem & Dominum *Hiberniæ* jurantes ei & heredibus suis Fidelitatem & Regnandi super eos Potestatem in perpetuum & inde Dederunt ei Chartas suas. Exemplo autem Clericorum predicati Reges & Principes *Hiberniæ* receperunt simili modo Henricum Regem *Angliæ* in Dominum & Regem *Hiberniæ* & sui devenerunt, & ei & Heredibus suis Fidelitatem contra omnes Jura- verunt.

Matthew Paris likewise in his History, speaking of King *Henry II.* being in *Ireland*, faith, Archiepiscopi & Episcopi ipsum in Regem & Dominum receperunt, & ei Fidelitatem & Juraverunt.

John Brampton, Abbot of *Jornal*, in his *Historia Jornalenſi*, page 1070, speaking of *Henry*

*Henry II. hath these Words, Recepit ab uno-
quoque Archiepiscopo & Episcopo Hiberniae
Literas cum Sigillis suis in modum Chartæ pen-
tentibus, Regnum Hiberniae sibi & Hæredibus
suis Confirmantes, & Testimonium perhibentes
ipsoſ in Hibernia eum & Heredes ſuos ſibi in
Reges & Dominos in perpetuum Constituiſſe.
All the Archbifhops, Bifhops, and Abbots of
Ireland came to the King of England, and
received him for King and Lord of Ireland,
swearing Fealty to him and his Heirs
for ever. The Kings also and Princes of
Ireland did in like manner receive Henry
King of England for Lord of Ireland, and
became his Men, and did him Homage, and
ſwore Fealty to him and his Heirs against
all Men. And he received Letters from
them with their Seals pendant in the man-
ner of Charters, confirming the Kingdom
of Ireland to him and his Heirs; and testi-
fying, That they in Ireland had ordained
him and his Heirs to be their King and
Lord of Ireland for ever. After which, he
returned into England in April following,
viz. April, 1173.*

I come now to enquire into our second
Particular proposed, viz. Whether Ireland
might be properly ſaid to be conquered by
King Henry the Second, or by any other
Prince in any ſucceeding Rebellion. And
here we are to understand by conquest, an
*Acquisition of a Kingdom by Force of Arms, to
which*

which Force likewise has been opposed; if we are to understand Conquest in any other Sense, I see not of what Use it can be made against Ireland's being a free Country. I know *Conquestus* signifies a peaceable Acquisition, as well as an hostile Subjugating of an Enemy. *Vid. Spelman's Glos.* And in this Sense, *William* the First is called the *Conqueror*; and many of our Kings have used the Epocha, *post Conquestum*. And so likewise *Henry* the Second stiled himself *Conquestor & Dominus Hiberniae*; but that his Conquest was no violent Subjugation of this Kingdom, is manifest from what foregoes: For here we have an intire and voluntary Submission of all the ecclesiastical and civil States of *Ireland* to King *Henry II.* without the least hostile Stroke on any Side; we hear not in any of the Chronicles of any Violence on either Part; all was transacted with the greatest Quiet, Tranquility, and Freedom imaginable. I doubt not but the barbarous People of the Island at that Time were struck with Fear and Terror of King *Henry II.*'s powerful Force which he brought with him; but still their easy and voluntary Submissions exempts them from the Consequences of an hostile *Conquest*, whatever they are; where there is no Opposition, such a *Conquest* can take no place.

I have before taken Notice of *Henry* the Second's using the Stile of *Conquestor Hiber-*

*Hiberniæ**; I presume no Argument can be drawn from hence for *Ireland's* being a conquered Country; for we find that many of the Kings of *England* have used the Æra of *post Conquestum*; *Edward* the Third was the first that used it in *England*; and we frequently meet with *Henricus post Conquestum Quartus*, &c. as taking the *Norman Invasion* of *William* the First for a *Conquest*. But I believe the People of *England* would take it very ill to be thought a *conquered Nation* in the Sense that some impose it on *Ireland*: And yet we find the same Reason in one Case as in the other, if the Argument from the King's Stile of *Conqueror* prevail. Nay, *England* may be said much more properly to be *conquered* by *William* the First, than *Ireland* by *Henry* the Second: For we all know with what Violence and Opposition from *Harrold* King *William* obtained the Kingdom, after a bloody Battle near *Hastings*. Whereas *Henry* the Second received not the least Opposition in *Ireland*, all came in peaceably, and had large Concessions made them of the like Laws and Liberties with the People of *England*, which they gladly accepted, as we shall see hereafter. But I am fully satisfied that neither King *William* the First in his Acquisition of *England*, or

* Mr. SELDEN will not allow that ever *Henry* II. used this Stile. *Tit. Hon. Par. 2. C. 5. Sect. 26.*

Henry

Henry II. in his Acquest of Ireland, obtained the least Title to what some would give to *Conquerors*. Tho' for my own Part, were they *Conquerors* in a Sense never so strict, I should enlarge their Prerogative very little or nothing thereby, as shall appear more fully in the Sequel of this Discourse.

Another Argument for *Henry the Second's hostile Conquest of Ireland*, is taken from the Opposition which the Natives of *Ireland* gave to the first Adventurers, *Fitz-Stephens*, *Fitzgerald*, and *Earl Strongbow*, and the Battles they fought in assisting *Mac-Morrog* Prince of *Leinster*, in the Recovery of his Principality.

'Tis certain there were some Conflicts between them and the *Irish*, in which the latter were constantly beaten; but certainly the Conquests obtained by those Adventurers, who came over only by the King's *License* and *Permission*, and not at all by his particular *Command* (as is manifest from the Words of the Letters Patents of License recited by *Giraldus Cambrensis*, *Heb. Expug.* page 760. *Edit. Francof.* 1603. *Angl. Norm. Hiber. Cambd.* can never be called the Conquest of *Henry the Second*, especially considering that *Henry the Second* himself does not appear to have any Design of coming into *Ireland*, or obtaining the Dominion thereof, when he gave to his Subjects of *England* this License of assisting *Mac-Morrog*,

rogb. But I conceive rather the contrary appears by the Stipulations between *Mac-Morrogb* and the Adventurers, and especially between him and *Strongbow*, who was to succeed him in his Principality.

From what foregoes, I presume it appears, that *Ireland* cannot properly be said *so to be conquer'd* by *Henry the Second*, as to give the Parliament of *England* any Jurisdiction over us; it will much more easily appear, that the *English Victories* in any succeeding *Rebellions* in that Kingdom, give no *Pretence* to a *Conquest*: If every Suppression of a Rebellion may be call'd a *Conquest*, I know not what Country will be excepted. The *Rebellions* in *England* have been frequent; in the Contests between the Houses of *York* and *Lancaster*, one Side or other must needs be rebellious. I am sure the Commotions in King *Charles the First's Time*, are stiled so by most Historians. This *Pretence* therefore of *Conquest* from *Rebellions*, has so little Colour in it, that I shall not insist longer on it: I know *Conquest* is an hateful Word to *English Ears*, and we have lately seen a Book* undergo a severe Censure, for offering to broach the *Doctrine of Conquest* in the *Free Kingdom of England*.

But, to take off all *Pretence* from this Title by *Conquest*, I come in the third Place

* Bishop of *Salisbury's Pastoral Letter*.

to enquire, *What Title Conquest gives by the Law of Nature and Reason?*

And in this Particular I conceive, that if the Aggressor, or Insulter, invades a Nation *unjustly*, he can never thereby have a Right over the conquered: This I suppose will be readily granted by all Men: If a Villain with a Pistol at my Breast, makes me convey my Estate to him, no one will say that this gives him any Right: And yet just such a Title as this has an *unjust Conqueror*; who with a Sword at my Throat forces me into Submission; that is, forces me to part with my *Natural Estate*, and Birth-right, of being govern'd only by Laws to which I give my *Consent*, and not by his Will, or the Will of any other.

Let us then suppose a *just Invader*, one that has *Right* on his Side, to attack a Nation in an hostile Manner; and that those who oppose him are in the *Wrong*: Let us then see what Power he gets, and over whom.

First, 'Tis plain he gets by his Conquest no Power over those who *conquered with him*; they that fought on his Side, whether as private Soldiers or Commanders, cannot suffer by the Conquest, but must at least be as much *Freemen*, as they were before: If any lost their Freedom by the *Norman Conquest*, (supposing King *William the First*, had *Right to invade England*) it was only the *Saxons*

Saxons and *Britains*, and not the *Normans* that conquered with him. In like manner, supposing *Hen. II.* had *Right* to invade this Island, and that he had been opposed therein by the Inhabitants, it was only the *Ancient Race* of the *Irish* that could suffer by this Subjugation ; the *English* and *Britains*, that came over and conquered with him, retain'd all the Freedoms and Immunities of *Free-born Subjects* ; they nor their Descendants could not in reason lose these, for being successful and victorious ; for so the State of both *Conquerors* and *conquered* shall be equally *slavish*. Now 'tis manifest that the great Body of the present People of *Ireland*, are the Progny of the *English* and *Britains*, that from time to time have come over into this Kingdom ; and there remains but a meer handful of the Ancient *Irish* at this Day ; I may say, not one in a Thousand : So that if I, or any Body else, claim the like Freedoms with the Natural Born *Subjects* of *England*, as being descended from them, it will be impossible to prove the contrary. I conclude therefore, that a *just Conqueror* gets no Power, but only over those who have actually *affisted* in that *Unjust Force* that is used against him.

And as those that joined with the Conqueror in a just Invasion, have lost no Right by the Conquest ; so neither have those of the Country who *oppos'd him not* : This seems so

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so reasonable at first Proposal, that it wants little Proof. All that gives Title in a *just Conquest*, is the *Opposers* using *brutal Force*, and quitting the Law of Reason, and using the Law of Violence; whereby the Conqueror is entitled to use him as a *Beast*; that is, kill him, or enslave him.

Secondly, Let us consider what Power that is which a *Rightful Conqueror* has over the subdued *Opposers*: And this we shall find extends little farther than over the *Lives* of the *conquered*; I say *little farther* than over their *Lives*; for how far it extends to their *Estates*, and that it extends not at all to deprive their *Posterity* of the *Freedoms* and *Immunities* to which all *Mankind* have a *Right*, I shall shew presently: That the *just Conqueror* has an absolute Power over the *Lives* and *Liberties* of the *conquered*, appears from hence, because the *conquered*, by putting themselves in a *State of War*, by using an *unjust Force*, have thereby *forfeited* their *Lives*. For quitting *Reason*, (which is the Rule between Man and Man) and using *Force*, (which is the Way of *Beasts*) they become liable to be destroy'd by him against whom they use *Force*, as any savage wild *Beast* that is dangerous to his *Being*.

And this is the Case of *Rebels* in a settled Commonwealth, who forfeit their *Lives* on this Account. But as for forfeiting their *Estates*,

Estates, it depends on the Municipal Laws of the Kingdom. But we are now enquiring what the Consequence will be, between two contesting Nations.

Which brings me to consider how far a just Conqueror has Power over the *Posterity* and *Estates* of the conquered.

As to the *Posterity*, they not having joined or assisted in the *forcible Opposition* of the Conquerors *just Arms*, can lose no Benefit thereby. 'Tis unreasonable any Man should be punished but for his own Fault. Man being a free Agent, is only answerable for his own Demerits; and as it would be highly unjust to hang up the Father for the Son's Offence, so the Converse is equally unjust, that the Son should suffer any Inconvenience for the Father's Crime. A Father hath not in himself a Power over the Life or Liberty of his Child, so that no Act of his can possibly forfeit it. And tho' we find in the Municipal Laws of particular Kingdoms, that the Son loses the Father's Estate for the Rebellion or other Demerit of the Father, yet this is consented and agreed to for the public Safety, and for deterring the Subjects from certain enormous Crimes that would be highly prejudicial to the Commonwealth. And to such Constitutions the Subjects are bound to submit, having consented to them, tho' it may be unreasonable to put the like in execution between *Nation* and

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Nation in the State of Nature: For in settled Governments, Property in Estates is regulated, bounded and determined by the Laws of the Commonwealth, consented to by the People, so that in these, 'tis no Injustice for the Son to lose his Patrimony for his Father's Rebellion or other Demerit.

If therefore the *Posterity* of the conquered, are not to suffer for the unjust *Opposition* given to the Victor by their *Ancestors*, we shall find little Place for any Power of the Conquerors over the *Estates* of the subdued. The *Father*, by his Miscarriages and Violence, can forfeit but his own Life, he involves not his *Children* in his Guilt or Destruction. His *Goods*, which *Nature* (that willeth the Preservation of all *Mankind* as far as possible) hath made to belong to his *Children* to sustain them, do still continue to belong to his *Children*. 'Tis true indeed it usually happens that *Damage* attends unjust Force; and as far as the *Repair* of this *Damage* requires it, so far the rightful Conqueror may invade the *Goods* and *Estate* of the conquered; but when this *Damage* is made up, his Title to the *Goods* ceases, and the Residue belongs to the *Wife* and *Children* of the subdued.

It may seem a strange Doctrine, that any one should have a Power over the *Life* of another Man, and not over his *Estate*; but this we find every Day, for tho' I may
kill

kill a Thief that sets on me in the Highway, yet I may not take away his *Money*; for 'tis the *brutal Force* the Aggressor has used, that gives his Adversary a Right to take away his *Life*, as a noxious Creature: But 'tis only *Damage sustained*, that gives Title to another Man's *Goods*.

It must be confessed that the Practice of the World is otherwise, and we commonly see the Conqueror (whether *just* or *unjust*) by the Force he has over the conquered, compels them with a Sword at their Breast to stoop to his Conditions, and submit to such a Government as he pleases to afford them. But we enquire not now what is the *Practice*, but what *Right there is to do so*. If it be said the conquered submit by their own *Consent*; then this allows *Consent* necessary to give the Conqueror a Title to Rule over them. But then we may enquire, whether Promises extorted by *Force* without *Right*, can be thought *Consent*; and how far they are *obligatory*; and I humbly conceive they *bind not at all*. He that forces my Horse from me, ought presently to *restore* him, and I have still a *Right* to retake him: So he that has forced a Promise from me, ought presently to *restore* it, that is, quit me of the *Obligation* of it, or I may chuse whether I will perform it or not: For the *Law of Nature* obliges us only by the *Rules* she prescribes; and therefore can-

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not oblige me by the *Violation* of her Rules; such is the extorting any thing from me by *Force*.

From what has been said, I presume it pretty clearly appears, that an *unjust* Conquest gives *no Title* at all; that a *just* Conquest gives Power only over the *Lives* and *Liberties* of the *actual Opposers*, but not over their *Posterity* and *Estates*, otherwise than as before is mentioned; and not at all over those that did *not concur* in the Opposition.

They that desire a more full Disquisition of this Matter, may find it at large in an incomparable *Treatise*, concerning the *True original Extent and End of civil Government*, Chap. 16. This Discourse is said to be written by my excellent Friend, JOHN LOCKE, Esq; Whether it be so or not, I know not; this I am sure, whoever is the Author, the greatest Genius in *Christendom* need not disown it.

But granting that all we have said in this Matter is *wrong*; and granting that a Conqueror, whether *just* or *unjust*, obtains an *absolute arbitrary Dominion* over the Persons, Estates, Lives, Liberties and Fortunes of all those whom he finds in the Nation, their Wives, Posterity, &c. so as to make perpetual *Slaves* of them and their Generations to come; let us next enquire, whether *Concessions* granted by such a victorious *Hero* do not bound the Exorbitancy of his Power, and

and whether he be not obliged strictly to observe these Grants.

And here I believe no Man of common Sense or Justice will deny it; none that had ever considered the Law of Nature and Nations, can possibly hesitate on this Matter; the very proposing it strikes the Sense and common Notions of all Men so forcibly, that it needs no farther Proof. I shall therefore insist no longer on it, but hasten to consider how far this is the Case of *Ireland*: And that brings me naturally to the fourth Particular proposed, *viz.* to shew by Precedents, Records, and History, what Concessions and Grants have been made from time to time to the People of *Ireland*, and by what Steps the Laws of *England* came to be introduced into this Kingdom.

We are told by *Matth. Paris*, Historiographer to *Henry III.* that *Henry the Second*, a little before he left *Ireland*, in a public Assembly and Council of the *Irish* at *Lismore*, did cause the *Irish* to receive, and swear to be governed by the Laws of *England*: *Rex Henricus* (saith he) *antequam ex Hibernia Rediret apud Lismore Concilium Congregavit ubi Leges Angliae sunt ab omnibus gratantur receptae, & Juratoriā cautione presitā Confirmatæ;* Vid. *Matth. Paris*, ad An. 1172. Vit. H. 2.

And not only thus, but if we may give Credit to *Sir Edward Cook*, in the 4th Instit.

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Cap. i. and 76. and to the Inscription to the *Irish Modus Tenendi Parliamentum*, it will clearly appear, that *Henry the Second* did not only settle the Laws of *England* in *Ireland*, and the Jurisdiction ecclesiastical there, by the voluntary Acceptance and Allowance of the Nobility and Clergy, but did likewise allow them the Freedom of holding of Parliaments in *Ireland*, as a separate and distinct Kingdom from *England*; and did then send them a *Modus* to direct them how to hold their Parliaments there. The Title of which *Modus* runs thus :

“ *Henricus Rex Angliae Conquestor &*
“ *Dominus Hiberniae, &c. Mittit banc*
“ *formam Archiepiscopis, Episcopis, Ab-*
“ *batibus, Prioribus, Commitibus, Ba-*
“ *ronibus, Justiciariis, Vicecomitibus,*
“ *Majoribus, Præpositis, Ministris &*
“ *omnibus Fidelibus suis Terræ Hiberniae*
“ *Tenendi Parliamentum.*”

In primis Summonitio Parlamenti præ-
cedere debet per Quadraginta Dies.

And so forth.

This *Modus* is said to have been sent into *Ireland* by *Henry II.* for a Direction to hold their Parliaments there. And the Sense of it agrees for the most part with the *Modus Tenendi Parl.* in *England*, said to have been allowed

allowed by *William the Conqueror* when he obtained that Kingdom; where it is altered, it is only to fit it the better for the Kingdom of *Ireland*.

I know very well the Antiquity of this *Modus*, said to be transmitted for *Ireland* by *Henry II.* is questioned by some learned Antiquaries, particularly by Mr. *Selden** and Mr. *Pryn* †, who deny also the English *Modus* as well as this. But on the other hand, my Lord Chief Justice *Cook*, in the 4th Instit. page 12 and 349, does strenuously assert them both. And the late reverend and learned Dr. *Dopping*, Bishop of *Meath*, has published the Irish *Modus*, with a Vindication of its Antiquity and Authority in the Preface.

There seems to me but two Objections of any Moment raised by Mr. *Pryn* against these *Modi*. The one relates both to the English and Irish *Modus*; the other chiefly strikes at the Irish. He says the Name *Parliament*, so often found in these *Modi*, was not a Name for the great Council of *England* known so early as these *Modi* pretend to. I confess I am not prepared to disprove this Antiquary in this particular: But to me it seems reasonable enough to imagine,

* Tit. Hon. Par. 2. C. 5. Sect. 26. Edit. Lon. An. 1672.

† Against *Cook's* 4th Instit. C. 76.

that the Name *Parliament* came in with *William the Conqueror*: 'Tis a Word perfectly *French*; and I see no reason to doubt its coming in with the *Normans*. The other Objection affects our *Irish Modus*; for he tells us that *Sheriffs* were not established in *Ireland* in *Henry II's Time*, when this *Modus* was pretended to be sent hither, ye we find the Word *Vicecomes* therein. To this I can only answer, that *Henry II.* intending to establish in *Ireland* the *English Form of Government*, as the first and chief step thereto, he sent them Directions for holding of Parliaments, designing afterward, by degrees, and in due Time, to settle the other Constitutions agreeable to the Model of *England*. If therefore *England* had then *Sheriffs*, we need not wonder to find them named in the *Irish Modus*, though they were not as yet established amongst us, for they were designed to be appointed soon after, and before the *Modus* could be put regularly in execution; and accordingly we find them established in some Counties of *Ireland* in King *John's Time*.

This *Irish Modus* is said to have been in the Custody of Sir *Christopher Preston of Clane* in *Ireland*, Ann. 6. *Henry IV.* and by Sir *John Talbot*, Lord Lieutenant of *Ireland*, under King *Henry IV.* It was exemplified by *Insipeximus* under the great Seal of *Ireland*, and the Exemplification was sometimes

times in the Hands of Mr. Hackwel, of Lincoln's-Inn, and by him was communicated to Mr. Selden. The Tenor of which Exemplification runs thus;

Henricus Dei Gratia Rex Angliæ & Franciæ, & Dominus Hiberniæ, omnibus ad quos presentes Literæ pervenerint salutem Inspeximus Tenorem Diversorum Articulorum in quodam Rotulo Pergameneo Scriptorum cum Christophero Preston, Milite Tempore Arrestationis suæ apud Villam de Clare, per Deputatum Dilecti & Fidelis nostri Johannes Talbot de Hallomshire Chivaler locum nostrum Tenentis Terræ nostræ Hiberniæ, nuper factæ inventorum ac coram nobis & Concilio nostro in eadem terræ nostra apud Villam de Trim. Nono die Januarii ultimo præteriti in hæc verba.

“ *Modus Tenendi Parliamenta Henricus Rex Angliæ, Conquestor & Dominus Hibernia, Mittit hanc formam Archib. episcopis,* &c. and so as before, “ *Et omnibus Fidelibus suis Terræ Hiberniæ Tenendi Parliamentum Imprimis Summonitio, &c.*” and then follows the *Modus*, agreeable in most Things with that of *England*, only fitted to *Ireland*. Then the Exemplification concludes :

Nos

Nos autem tenores Articulorum predicatorum de Assensu praefati Locum tenentis & Concilii predicti tenore praesentium duximus Exemplificandum & has Literas nostras fieri facimus Patentes. Teste Praefato Locum nostrum tenente apud Trim. 12. die Januarii Anno Regni nostri sexto.

Per ipsum Locum tenentem & Concilium.

Now we can hardly think it credible (says the Bishop of *Meath*) that an *Exemplification* could have been made so solemnly of it by King *Henry* the Fourth, and that it should refer to a *Modus* transmitted into *Ireland* by King *Henry* the Second, and affirm that it was produced before the Lord Lieutenant and Council at *Trym*, if no such thing had been done: This were to call in question the Truth of all former Records and Transactions, and make the *Exemplification* contain an egregious Falshood in the Body of it.

The Reverend Bishop of *Meath*, in his fore-cited Preface, does believe that he had obtained the very original Record, said by my Lord *Cook* to have been in the Hands of Sir *Christopher Preston*: It came to that learned Prelate's Hands among other Papers and Manuscripts of Sir *William Domvile's*, late

late Attorney-General in this Kingdom, who in his Life-time, upon an occasional Discourse with the Bishop concerning it, told him, that this Record was bestowed on him (Sir *W. Domvile*) by Sir *James Cuffe*, late Deputy Vice-Treasurer of *Ireland*; that Sir *James* found it among the Papers of Sir *Francis Aungier*, Master of the Rolls in this Kingdom; and the present Earl of *Longford* (Grandson to Sir *Francis Aungier*) told the Bishop, that his said Grandfather had it out of the Treasury of *Waterford*.

Whilst I write this, I have this very Record now before me, from the Hands of the said Bishop of *Meath*'s Son, my Nephew, *Samuel Dopping*; and I must confess it has a venerable antient Appearance; but whether it be the true original Record, I leave on the Arguments produced for its Credit by the said Bishop.

This I am sure of, that whether this be the very Record transmitted hither by King *Henry the Second* or not, yet 'tis most certain, from the unanimous Concessions of all the fore-mentioned Antiquaries, *Cook*, *Selden*, *Pryn*, &c. that we have had Parliaments in *Ireland* very soon after the Invasion of *Henry II.* For *Pryn* confesses, that * King *Henry II.* after his Conquest of *Ireland*, and the general voluntary Submission,

* Against the 4th Instit. c. 76, p. 249.

Homages,

Homages, and Fealties of most of the *Irish* Kings, Prelates, Nobles, Cities and People to him, as to their Sovereign Lord and King, *Anno 1170*, (it should be 1172,) held therein a general Council of the Clergy at *Cashel*, wherein he rectified many Abuses in the Church, and established sundry ecclesiastical Laws, agreeable to those in the Church of ENGLAND ; *Ecclesiæ illius statum ad Anglicanæ Ecclesiæ formam Redigere Modis omnibus elaborando* ; to which the *Irish* Clergy promised Conformity, and to observe them for time to come, as *Giraldus Cambrensis**, who was then in *Ireland*, and other Historians†, relate : *Et ut in singulis Observatio similis Regnum Colligaret utrumque* (that is, *England* and *Ireland*) *passim omnes unanimi voluntate communi Assensu, Pari desiderio Regis imperio se subjiciunt, omnibus igitur hoc modo Consummatis, in Concilio habito apud Lismore Leges Angliae ab omnibus sunt gratantur receptæ, & juratoriâ cautione præstitâ Confirmatæ*, says *Matth. Paris*.

Can any Concession in the World be more plain and free than this ? We have heard of late much Talk in *England* of an *original*

* *Topograph. Hibern.* l. 3, c. 18. *Hib. Expug.* l. 11, c. 33, 34.

† *Hoveden Annal pars-post.* 302. *Brampton Chr. Col.* 171. *Knighton de Even. Engl.* l. c. c. 10, *Col.* 2394, 2395. *Pol. Virg. Hist. Engl.* l. 13, *Rudal. de Diceto. Walsingham*, &c. Original Compact for *Ireland*.

Compact between the King and People of England; I am sure it is not possible to shew a more fair original *Compact* between a *King* and *People* than this between *Henry the Second* and the *People of Ireland*, *That they should enjoy the like Liberties and Immunities, and be governed by the same mild Laws, both civil and ecclesiastical, as the People of England.*

From all which it is manifest, that there were no Laws imposed on the People of *Ireland* by any Authority of the Parliament of *England*, nor any Laws introduced into that Kingdom by *Henry the Second*, but by the *Consent* and *Allowance* of the People of *Ireland*. For both the civil and ecclesiastical State were settled there, *Regiae sublimitatis Authoritate*, solely by the King's Authority and their own good *Wills*, as the *Irish Statute, 11 Eliz. c. 1.* expresses it. And not only the *Laws of England*, but the Manner of holding Parliaments in *Ireland* to make Laws of their own (which is the *Foundation* and *Bulwark* of the People's *Liberties* and *Properties*) was directed and established there by *Henry the Second*, as if he were resolved that no other Person or Persons should be the Founders of the Government of *Ireland*, but himself and the *Consent* of the People, who submitted themselves to him against all Persons whatsoever.

Let

Let us now see by what farther Degrees the Government of *Ireland* grew up conformable to that of *England*.

About the twenty-third Year of *Henry the Second*, which was within five Years after his Return from *Ireland*, he created his younger Son *John, King of Ireland*, at a Parliament held at *Oxford*. Soon after, *King John* being then about twelve Years of Age; came into *Ireland*, from *Milford* to *Waterford*; as his Father had formerly done. The *Irish* Nobility and Gentry immediately repaired to him; but being received by him and his Retinue with some Scorn and Derision, by reason of their long rude Beards; *quas more Patrio grandes habebant & prolixas* (says *Giraldus Cambrensis, Hib. Expug. Cap. 35.*) they took such Offence therat, that they departed in much Discontent; which was the Occasion of the young King's staying so short a Time in *Ireland*, as he did this his first Time of being here.

And here, before we proceed any farther, we shall observe, That by this Donation of the Kingdom of *Ireland* to *King John, Ireland* was most eminently set apart again, as a *separate and distinct Kingdom* by itself from the Kingdom of *England*; and did so continue, until the Kingdom of *England* descended and came unto *King John*, after the Death of his Brother *Richard the First, King of England*, which was about twenty-two Years

Years after his being made King of *Ireland*; during which Space of twenty-two Years, both while his Father, *Henry the Second*, and his Brother, *Richard the First*, were living and reigning; King *John* made divers Grants and Charters to his Subjects of *Ireland*, which are yet in being in this Kingdom; wherein he stiles himself *Dominus Hiberniae*, (the constant Style 'till *Henry the Eighth's Time*) and in others, *Dominus Hiberniae & Comes Meritoniae*. By which Charters both the City of *Dublin*, and divers other Corporations enjoy many Privileges and Franchises to this Day. But after the said Grant of the Kingdom of *Ireland* to King *John*, neither his Father, *Henry II.* nor his Brother, King *Richard I.* Kings of *England*, ever stiled themselves, during their Lives, *Kings or Lords of Ireland*; for the *Dominion and Regality of Ireland* was wholly and separately vested in King *John*; being absolutely granted tinto him without any Reservation. And he being created King in the Parliament at *Oxford*, under the Stile and Title of *Lord of Ireland*, enjoyed all manner of kingly *Jurisdiction, Preheminence and Authority royal* belonging unto the *imperial State and Majesty of a King*, as are the express Words of the *Irish Statute, 33 Henry VIII. c. 1.* by which Statute the Style of *Dominus* was changed to that of *Rex Hiberniae*.

Let

32 THE CASE OF

Let us then suppose that *Richard the First*, King *John's* elder Brother, had not died without Issue, but that his Progeny had sat on the Throne of *England*, in a continued Succession to this Day: Let us suppose likewise the same of King *John's* Progeny, in relation to the Throne of *Ireland*; where then had been the Subordination of *Ireland* to the Parliament, or even to the King of *England*? Certainly no such Thing could have been then pretended: Therefore if any such Subordination there be, it must arise from something that followed after the Descent of *England* to King *John*; for by that Descent, *England* might as properly be subordinate to *Ireland*, as the Converse; *Ireland* being vested in the royal Person of King *John* twenty-two Years before his Accession to the Crown of *England*, and being a more ancient Kingdom than the Kingdom of *England*. As the English Orators in the Council of *Constance*, Ann. 1417 *, confessed and alleged, as an Argument in the Contest between *Henry the Fifth's* Legates and those of *Charles the Sixth*, King of *France*, for Precedence: *Satis Constat* (say they) [†]*secundum Albertum Magnum & Bartholomeum de*

* *Selden's Tit. Par. I. C. 8. Sect. 5.* *Usher*, Archbishop of *Armagh*, of the Religion of the ancient Irish, *Cap. II.*

[†] *Aet. Concil. Constant. Ses. 28. MS. in Bib. Reg.* not in the printed Acts.

Proprietatibus

Proprietatibus Rerum, quod toto Mundo in tres partes Diviso, scilicet in Europam, Asiam & Africam (for America was not then discovered) Europa in quatuor Dividitur Regna scilicet, Primum Romanum, Secundum Constantiopolitanum, Tertium Regnum Hiberniæ (quod jam translatum est in Anglos) et Quartum Regnum Hispaniæ. Ex quo patet, quod Rex Angliæ & Regnum suum sunt de Eminentioribus Anterioribus Regibus & Regnis totius Europæ. The Antiquity and Precedence of the King of England was allowed him wholly on the account of his Kingdom of Ireland.

Perhaps it will be said, that this subordination of the Kingdom of Ireland to the Kingdom of England, proceeds from Ireland's being annexed to, and, as it were, united with the imperial Crown of England by several Acts of Parliament, both in England and Ireland, since King John's Time. But how far this operates, I shall enquire more fully hereafter; I shall only at present observe, that I conceive little more is effected by these Statutes, than that Ireland shall not be aliened or separated from the King of England, who cannot hereby dispose of it otherwise than in legal Succession along with England; and that whoever is King of England, is *ipso facto* King of Ireland, and the Subjects of Ireland are obliged to obey him as their liege Lord.

To proceed therefore. After both Crowns were united, on the Death of *Richard the First* without Issue, in the royal Person of King *John*: He, about the twelfth Year of his Reign of *England*, went again into *Ireland*, viz. the twenty-eighth Day of *June*, 1210, and *Matth. Paris* tells us, p. 220, *Cum Venisset ad Dublinensem Civitatem Occurrerunt ei ibidem plus quam 20 Reguli illius Regionis qui omnes Timore maximo preterriti homagium ei & Fidelitatem fecerunt. Fecit quoque Rex ibidem, Construere Leges & Con-suetudines Anglicanas, ponens Vicecomites aliosque Ministros, qui populum Regni illius juxta Leges Anglicanas Judicarent.*

His Son, King *Henry the Third*, came to the Crown the Nineteenth of *October*, 1216; and in *November* following, he granted to *Ireland* a *Magna Charta*, dated at *Bristol* 12 *November*, the first Year of his Reign. 'Tis prefaced, that for the Honour of God and Advancement of holy Church, by the Advice of his Council of *England*, (whose Names are particularly recited) he makes the following *Grant to Ireland*; and then goes on exactly agreeable to the *Magna Charta* which he granted to *England*; only in ours we have *Civitas Dublin*, & *Aven-liffe*, instead of *Civitas London*, & *Thamesis*; with other Alterations of the like kind where needful. But ours is eight Years older than that which he granted to *England*; it not being

being 'till the ninth Year of his Reign, and ours is the first Year. This *Magna Charta* of *Ireland* concludes thus, *Qui vera sigillum nondum Habuimus presentem Cartum Sigillis Venerabilis Patris nostri Domini Gualt. Apost. Sedis Legati & Willelmi Mareschalli Comitis Pembroke Rectoris nostri & Regni nostri fecimus Sigillari. Testibus omnibus prænominatis & alijs Multis Dat per Manus Prædictorum Domini Legati & Willelmi Marescalli. Apud Bristol Duodecimo die Novembr. Regni nostri Anno Primo.* An ancient Copy of this *Magna Charta* of *Ireland* is to be found in the *Red Book* of the *Exchequer*, *Dublin*.

In *February* following, in the first Year likewise of his Reign, by Advice of all his faithful Counsellors in *England*, to gratify the *Irish* (says *Pryn* *) for their eminent Loyalty to his Father and him, he granted them out of his *special Grace*, that they and their Heirs for ever should enjoy the Liberties granted by his Father and himself to the Realm of *England*; which he reduced into Writing, and sent sealed thither under the Seal of the Pope's Legate, and W. Earl Marshal his Governor, because he had then no Seal of his own. This, as I conceive, refers to the forementioned *Magna Charta Hiberniae*. The Record, as recited by Mr. *Pryn*, here follows :

* *Pryn* against the 4th Inst. c. 76. p. 250.

“ Rex Archiepiscopis, Episcopis, Abbatis, Comitibus, Baronibus, Militibus & Libere Tenentibus, & omnibus Fidelibus suis per Hiberniam Constitutis, Salutem: Fidelitatem vestram in Domino Commendantes quam Domino Patri nostro semper Exhibuistis & nobis estis diebus nostris Exhibituri: Volumus quod in signum Fidelitatis vestræ, tam præclaræ, tam Insignis Libertatibus Regno nostro Angliæ a Patre nostro & nobis Concessis, de gratia nostra & Dono in Regno nostro Hiberniæ guadatis vos & vestri Hæredes in perpetuum. Quas distincte in Scriptum Reductas de Communi Consilio omnium Fidelium nostrorum vobis Mittimus Signatas Sigillis Domini nostri G. Apostolicæ Sedis Legati & Fidelis nostri Com. W. Maresc. Rectoris nostri & Regni nostri quia Sigillum nondum habuimus, easdem processu temporis de Majori Consilio proprio Sigillo Signaturi.”

Teste apud Glouc. 6 Februar.

Here we have a free Grant of all the *Liberties of England* to the People of *Ireland*. But we know the *Liberties of Englishmen* are founded on that universal Law of Nature that ought to prevail throughout the whole World,

World, of being governed only by such Laws to which they give their own Consent by their Representatives in Parliament.

And here, before I proceed farther, I shall take notice, that in the late raised Controversy, *Whether the House of Commons were an essential Part of the Parliament before the 49th Year of Henry the Third:* The learned Mr. Petyt, Keeper of the Records in the Tower, in his Book on that Subject, page 71. deduces his 9th Argument from the Comparison of the antient Generale Concilium, or Parliament of Ireland, instanced An. 38. Henry III. with the Parliament in England, wherein the Citizens and Burgesses were; which was eleven Years before the pretended Beginning of the Commons in England.

For thus we find it in that Author:

“ As great a Right and Privilege surely
 “ was, and ought to be allowed to the
 “ English Subjects as to the Irish, before the
 “ 49th of Henry III. And if that be ad-
 “ mitted, and that their (the Irish) Com-
 “ mune Concilium, or Parliament, had its
 “ Platform from ours (the English) as I
 “ think it will not be denied by any that
 “ have considered the History and Records
 “ touching that Land (Ireland) we shall
 “ find the ensuing Records, Ann. 38 Henry

" III. clearly evince, that the Citizens and
" Burgeses were then a Part of their (the
" Irish) great Council or Parliament.

" That the King being in *partibus Trans-*
" *marinis*, and the Queen being left Regent,
" she sends Writs (or a Letter) in the King's
" Name, directed *Archiepiscopis, Episcopis,*
" *Abbatibus, Prioribus, Comitatibus, Baroni-*
" *bus, Militibus, Liberis Hominibus, Civibus*
" & *Burgenibus, Terræ suæ Hiberniæ*; tel-
" ling them that *Mittimus Fratrem Nichol-*
" *aum de Sancto Neoto, Fratrem Hospitii*
" *Sancti Johannis Jerusalem in Anglia ad*
" *partes Hiberniæ ad exponendum vobis* (to-
" gether with *J. Fitz-Geoffery*, the King's
" Justice) the State of his Land of *Vascony*
" endangered by the hostile Invasion of the
" Kings of *Castile*, qui *nullo jure sed potentia*
" *sua Confiscus Terram nostram Vasconiæ per*
" *ipsius Fortitudinem, a manibus nostris Au-*
" *ferre & a Domino Regni Angliæ segregare*
" *Proponit.* And therefore *universitatem*
" *Vestrarum Quanta possumus Affectione Rogan-*
" *tes quatenus nos & jura nostra totaliter in-*
" *defensa non deserentes nobis in tanto periculo*
" *quantumcunque poterites de Gente & Pe-*
" *cunia subveniatis*; which would turn to
" their everlasting Honour; concluding, *bis*
" *nostris Augustiis taliter Computientes, quod*
" *nos & Herædes nostri vobis & Hæredibus*
" *vestris sumus non immerito Obligati. Teste*
" *Regnia*

" Regnia & R. Comite Cornubiæ, apud Win-
" desor, 17 die Februar.
" Per Reginam."

Thus far Mr. Petyt.

Here we have a Letter from the Queen Regent to the Parliament in *Ireland*, in an humble manner beseeching them for an Aid of Men and Money against the King of *Castile's* hostile Invasion of *Gascony*; from whence we may perceive, that in those Days, no more than at present, *Men and Money* could not be raised but by *Consent of Parliament*. I have been the more particular in transcribing this Passage out of Mr. *Petyt*, to shew that we have as antient and express an Authority for our present Constitution of Parliaments in *Ireland*, as can be shewn in *England*. And I believe it will not be thought adviseable in these latter Days to break in upon *old settled Constitutions*: No one knows how fatal the Consequences of that may be.

To return therefore where we digressed. *Henry the Third*, about the twelfth Year of his Reign, did specially empower *Richard de Burgh*, then Justice of *Ireland*, at a certain Day and Place, to summon all the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Freeholders and Sheriffs of each County, and before them to cause

to be read the Charter of his Father, King *John*, whereunto his Seals was appendant, whereby he had granted unto them the Laws and Customs of *England*, and unto which they swore Obedience : and that he should cause the same Laws to be observed and proclaimed in the several Counties of *Ireland*, that so none presume to do contrary to the King's Command. The Record I have taken out of Mr. *Pryn**, in these Words :

“ Rex Dilecto & Fideli suo Richardo de
“ Burgo Justic' suo Hibern. Salutem,
“ Mandamus vobis firmiter præcipi-
“ entes quatenus certo die & Loco fa-
“ ciates venire coram vobis Archiepif-
“ copos, Episcopos, Abbates, Piores,
“ Comites & Barones Milites & libere
“ Tenentes & Ballivos singulorum
“ Comitatum & coram eis Publice legi
“ faciatis Chartam Domini J. Regis
“ Patris nostri cui Sigillum suum ap-
“ pensum est, quam fieri fecit & jurari
“ a Magnantibus Hibern. de Legibus
“ & Consuetudinis Angliæ Observandis
“ in Hibernia. Et præcipiatis eis ex
“ parte nostra quod Leges illas &
“ Consuetudines in Charta prædicta
“ contentas de cætero firmiter teneant

* Against Cook's 4th Inst, page 252.

" & observent & hoc idem per singulos
 " Commitatus Hiberniae clamari faciat
 " is & teneri prohibentes firmiter ex
 " parte nostra & super foris facturam
 " nostram ne quis contra hoc Manda-
 " tum nostrum venire præsumat, &c.
 " Teste me ipso apud Westm' 8 die Maii
 " Ann. Reg. nostri 12."

By what foregoes, I presume it plainly appears, that by three several Establishments under the three first Kings of *Ireland*, of the *Norman Race*, the *Laws and Liberties of the People of England were granted to the People of Ireland*. And that neither of these three Kings established those Laws in *Ireland* by any *Power* of the *Parliament of England*, but by the free *Consent, Allowance, and Acceptance* of the *People of Ireland*.

Henry the Second first introduced the *Laws of England* into *Ireland*, in a public Assembly of the *Irish* at *Lismore*, and allowed them the Freedom of *Parliaments* to be held in *Ireland* as they were held in *England*.

King *John*, at the *Request* and by the *Consent* of the *Irish*, did appoint the *Laws of England* to be of Force in *Ireland*; and though he did not this till the twelfth Year of his Reign of *England*, yet he did it not as King of *England*, but as Lord of *Ireland*: For the Crown of *England* came to him by Descent from his Brother *Richard*, who had

no *regal Power* in *Ireland*; and what his Brother had could not descend to him.

Henry the Third, in the first Year of his Reign, gave *Ireland* a *Magna Charta*; and in the twelfth Year of his Reign did provide, that all the Laws of *England* should be observed in *Ireland*; and that the Charter granted to the *Irish* by his Father, King *John*, under his Seal, when he was in that Kingdom, should be kept inviolably.

And from the Days of these three Kings, have *England* and *Ireland* been both governed by the like Forms of Government, under one and the same supreme Head, the *King of England*; yet so, as both Kingdoms remained separate and distinct in their several Jurisdictions under that one Head, as are the Kingdoms of *England* and *Scotland* at this Day, without any *Subordination* of the one to the other.

It were endless to mention all the Records and Precedents that might be quoted for the Establishment of the Laws of *England* in *Ireland*; I shall therefore enter no farther into that Matter, but herein refer to Lord Chief Justice *Cook**, *Pryn*†, *Reyly*‡, &c.

If now we enquire, *What were those Laws of England that became thus established*

* Fourth Instit.

† Against the 4th Instit.

‡ *Placita Parliamentaria*.

in Ireland? Surely we must first reckon the great *Law of Parliaments*, which *England* so justly challenges, and all *Mankind* have a Right to. By the *Law of Parliament*, I mean that Law whereby all Laws receive their Sanction, *the free Debates and Consent of the People, by themselves or their chosen Representatives.* That this was a main Branch of the *English Law* established in this Kingdom, and the very Foundation of our future Legislature, appears manifest from Parliaments being so early convoked in *Ireland*, as the fore-mentioned Precedents express.

Mr. *Pryn* acknowledges one in *Henry the Second's Time*, (page 259. against the 4th *Instit.*) but makes a very false Conclusion, that there appears no Footsteps of a Parliament afterwards, till the third Year of *Edward the Second*, because the Acts of that Parliament are the first that are printed in our *Irish Statute Book*: For so we may argue the Parliaments of *England* to be of later Date than pretended, when we find the first printed Acts in *Keeble* to be no older than the 9th of *Henry the Third*. Whereas it is most certain, that Parliaments have been held in *England* some Ages before that.

After this great Law of Parliaments, we may reckon the common *Law of England*; whether it relates to regulating and settling of *Property*, and Estates in Goods or Land, or to the *judiciary* and *executive* Parts of the Law,

Law, and the Ministers and Process thereof, or to *criminal* Cases. These surely were all established in this Country by the three first Kings of *Ireland*, of the *Norman* Race.

Let us now consider the State of the *Statute Laws of England* under these three Kings and their Predecessors; for by the *Irish* voluntary Submission to, and Acceptance of the Laws and Government of *England*, we must repute them to have submitted themselves to these likewise, till a regular Legislature was established amongst them, in pursuance of that Submission and voluntary Acceptance.

And here we shall find, that in those Times, *viz.* from the *Norman* Conquest to *Henry* the Third's Time inclusive, the Statute Laws of *England* were very few and slender. It is true, that before the 12th of *Henry* the Third, we find against the *English* Historians frequent mention of the Laws of *Edward the Confessor*, *William the Conqueror*, *Henry* the First, *Henry* the Second, King *John*, and *Henry* the Third; all which are only Charters, or several Grants of Liberties from the King; which nevertheless had the Force of Acts of Parliament, and laid as great Obligations both upon Prince and People, as Acts of Parliament do at this Day: Whereof we may read several Proofs in the *Prince's Case*, *Cook's 8th Report*. But these were only so many *Confirmations* of each

each other, and all of them were *Sanctions of the Common Laws and Liberties of the People of England, ab Antiquo Usitate & Comprobate per totam terram & in quibus ipse & eorum Patres nati & nutriti sunt*, as the Words of the Manuscript *Chronicle of Litchfield* express it.

The Laws of *Edward the Confessor*, held in so great Veneration in antient Times, & *per universum Regnum corroboratæ & confirmatæ prius inventæ & constitutæ fuerunt Tempore Regis Edgari Avi sui*. *Verum tamen post mortem ipsius Regis Edgari, usque ad Coronationem Sancti Regis Edwardi* (which was 67 Years) *prædictæ Leges Sopitæ sunt & penitus intermissæ*. *Sed postquam Rex Edwardus in Regno sublimatus fuit consilio Baronum Angliæ Legem illam sopitam, Excitavit, Excitam Reparavit, Reparatam Decoravit, Decoratam Confirmavit*; & *confirmatæ vocantur Lex Sancti Regis Edwardi*, non quod ipse primus eam ad invenisset; sed quod Reparavit, Restituitque *, as the said *Litchfield's Chronicle* has it. These Laws of *Edward the Confessor* were transcribed by *Ingulphus, Abbot of Croyland*, under *William the Conqueror*; and are annexed to his History.

The Laws of *William the Conqueror* are but a Confirmation of the Laws of *Edward the Confessor*, with some small Alterations,

* *Selden Notæ & specileg. ad eadmerum*, page 171.

as the very Letter of those Laws themselves express it*. *Hoc quoque præcipimus ut omnes habeant & teneant Leges Edwardi Regis in omnibus Rebus adiunctis his quas constituimus ad Utilitatem Anglorum.*

The Laws of *Henry the First*, which are in the *red Book of the Exchequer*, in the Custody of the King's Remembrancer in *England*, are but a summary Confirmation both of the Laws of *Edward the Confessor*, and *William the First* as the Charter itself expresses it†, *Lagam Regis Edwardi vobis redbo cum illis emendationibus quibus Pater meus emendavit Consilio Baronum suorum.*

The Laws of *Henry II.* called *Constitutiones Clarendonie*, and the *Affize of Clarendon* in the 2d. part of *Cooks Inst.* p. 6. are all but Confirmations and Vindications of the King's just Prerogative against the Usurpations of the Pope and Clergy: As we find at large in *Chron. Gervashi. Doroborn* p. 1387. Edit. Lond. An. 1652.

The Laws of King *John*, called the *Great Charter of King John*, granted in the 17th Year of his Reign, upon the Agreement made between him and his Barons at *Running Mead*, between *Stains* and *Windsor*, was but a *Confirmation* of the Laws of *Edward*

* *Leges W. 1. Cap. 63. apud Selden in notis ad eadem-*
rum, p. 192.

† *Vid. Selden ut supra.*

*the Confessor, and Henry the First, as * Mat. Paris relates it. Anno Regis Johannes 17. venientes ad Regem magnates petierunt quasdam Libertates & Leges Regis Edwardi cum aliis libertatibus sibi & Regno Angliae & Ecclesiae Anglicanae concessis confirmati prout in Charta Regis Hen. I. ascriptae continentur.* The same Historian gives us also at large both *Charta Libertatum, and Charta de Foresta,* which are not extant in the Rolls of those Times, nor to be found in any till the 28th of *Edward I.* and that but by *inspeximus.*

The Laws of *Henry III.* contained in *Magna Charta, and Charta de Foresta,* both which are called *Magnæ Chārtæ Libertatis Angliae,* and were establish'd about the 9th Year of *Henry III.* are for the most part but declaratory of the common municipal Laws of *England,* and that to no new Declaration thereof; for King *John,* in the 17th Year of his Reign, had granted the like before, which was also called *Magna Charta.* And † by the English Statute 25 Ed. I. c. 1. it is enacted, That the great *Charter,* and the *Charter of the Forrest* be taken as the *Common Law of England.*

By what foregoes, I conceive it is very clear, that all the *Charters, and Grants of Liberties* from *Edward the Confessor's Time,*

* Mat. Paris. adan. 1215. page 253, &c.

† Cook Pref. to the 2d. Inst.

down to the 9th of *Henry the Third*, were but *Confirmations* one of another, and all of them *Declarations*, and Confirmations of the *Common Law of England*. And by the several Establishments which we have formerly mentioned of the Laws of *England* to be of Force in *Ireland*: First, in the 13th of *Henry II*. Secondly, in the 12th of King *John*. Thirdly, in the 12th of *Henry III*. All those Laws and Customs of *England*, which by those several Charters were *declared* and *confirmed* to be the Laws of *England*, were established to be of *Force* in *Ireland*. And thus *Ireland* came to be governed by one and the same *Common Law* with *England*; and those Laws continue as Part of the municipal and fundamental Laws of both Kingdoms to this Day.

It now remains that we enquire, how the *Statute Laws* and *Acts of Parliament* made in *England* since the 9th of *Henry the Third*, came to be of Force in *Ireland* and whether all, or any of them, and which are in force here, and when, and how they came to be so.

And the first Precedent that occurs in our Books of *Acts of Parliament* in *Ireland*, particularly mentioning and confirming special *Acts of Parliament* in *England*, is found in a Marginal Note of Sir *Richard Bolton's*, formerly Lord Chief Baron of the *Exchequer* in *Ireland*, affixed in his Edition of the

Irish

Irish Statutes to Stat. 10. Hen. Seven. Cap. 22. to this purport, That in 13 Edward the Second, by Parliament in this Realm of Ireland, the Statutes of Merton, made the 20th of Henry the Second, and the Statutes of Malbridge, made the 52d of Henry the Third; the Statute of Westminster the first, made the 3d of Edward the First; the Statute of Gloucester, made the 6th of Edward the First; and the Statute of Westminster the second, made the 13th of Edward the First, were all confirmed in this Kingdom; and all other Statutes which were of Force in England, were referred to be examined in the next Parliament; and so many as were then allowed and published, to stand likewise for Laws in this Kingdom. And in the 10th of Henry the Fourth, it was enacted in this Kingdom of Ireland, That the Statutes made in England should not be of Force in this Kingdom, unless they were allowed and published in this Kingdom by Parliament. And the like Statute was made again in the 29th of Henry the Sixth. These Statutes are not to be found in the Rolls, nor any Parliament Roll of that Time: but he (Sir Richard Bolton) had seen the same exemplified under the great Seal, and the Exemplification remaineth in the Treasury of the City of Waterford. Thus far the Note. If we consider the frequent Troubles and Distractions in Ireland, we shall not wonder that these, and many other Rolls and Records

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cords have been lost in this Kingdom: For, from the third Year of *Edward* the Second, which was *Ann.* 1310, through the whole Reigns of *Edward* the Third, *Richard* the Second, *Henry* the Fourth, and *Henry* the Fifth, and so to the 7th Year of *Henry* the Sixth, *Anno* 1428, which is about 118 Years, there are not any *Parliament Rolls* to be found *; yet certain it is that divers Parliaments were held in *Ireland* in those Times†: The same may be said from *Henry* the Second's coming into *Ireland*, *Anno* 1172, to the third Year of *Edward* the Second, *Anno* 1310, about 138 Years.

Perhaps it may be said that if there were such Statutes of *Ireland* as the said Acts of the 10th of *Henry* the Fourth, and the 29th of *Henry* the Sixth; as they shew, that the Parliaments of *Ireland* did think that English Acts of Parliament could not bind *Ireland*; yet they shew likewise, that even in those Days the Parliaments of *England* did claim this Superiority; or else, to what purpose were the said Acts made, unless in denial of that Claim?

All which I hope may be readily granted without any Prejudice to the Right of the *Irish* Parliaments: There is nothing so com-

* *Annals of Ireland at the End of Camden's Britan.*
Edit. 1637. page 196, 197, &c.

† *Ibid.* p. 160. *Pryn against the 4th Instit.* Chap. 76.

mon, as to have one Man claim another Man's Right : And if bare *pretence* will give a *Title*, no Man is secure : And it will be yet worse, if when another so *pretends*, and I insist on my *Right*, my just Claim shall be turned to my Prejudice, and to the Disparagement of my Title.

We know very well that many of the Judges of our Four Courts have been from time to time sent us out of *England*; and some of them may easily be supposed to come over hither *prepossessed* with an Opinion of our Parliament's being subordinate to that of *England*: Or at least some of them may be *scrupulous*, and desirous of full *Security* in this Point ; and on their Account, and for their Satisfaction, such Acts as aforesaid, may be devised and enacted in *Ireland*. But then, God forbid that these Acts should afterwards be laid hold of to a clear other Intent than what they were framed for ; and instead of declaring and securing our Rights, should give an handle of Contest, by shewing that our Rights have been questioned of ancient Time.

In conclusion of all, if this *Superiority* of the Parliament of *England* have been *doubted* a great while ago, so it has been as great a while ago strenuously *opposed*, and absolutely denied by the Parliaments of *Ireland*. And by the way, I shall take Notice, that from whencesoever this ancient *Pretence* of

Ireland's Subordination proceeded in those Days, it did not arise from the Parliament of *England* itself : For we have not one single Instance of an English Act of Parliament *expressly claiming* this Right of binding us : But we have several Instances of *Irish* Acts of Parliament *expressly denying this Subordination*, as appears by what foregoes.

Afterwards, by a Statute made in *Ireland*, the 18th of *Henry the Sixth*, Cap. i. all the Statutes made in *England* against the *Extortions and Oppressions of Purveyors*, are enacted to be *holden and kept in all Points, and put in Execution in this Land of Ireland*.

And in the 32d Year of *Henry the Sixth*, Cap. i. by a Parliament in *Ireland*, it is enacted, *That all the Statutes made against Provisors to the Court of Rome, as well in England as in Ireland, be had and kept in force*.

After this, in a Parliament at *Drogheda*, the 8th of *Edward the Fourth*, Cap. i. it was ratified, that the *English Statute against Rape*, made the 6th of *Richard the Second*, should be of force in *Ireland* from the 6th Day of *March* last past : *And that from hence forth the said Act, and all other Statutes and Acts made by Authority of Parliament within the Realm of England, be ratified and confirmed, and adjudged by the Authority of this Parliament in their Force and Strength, from the said sixth Day of March*. We shall hereafter have

have occasion of taking farther Notice of this Statute upon another Account.

Lastly, in a Parliament held at *Drogheda*, the 10th of *Henry the Seventh*; Cap. 22. it is enacted, *That all Statutes late* (that is, as the learned in the Laws expound it*; before that Time) *made in England*, concerning the common and public Weal of the same, from henceforth be deemed effectual in Law, and be accepted, used and executed within this Land of *Ireland* in all Points, &c:

And in the 14th Year of the same King's Reign †, in a Parliament held at *Tristle Dermot*, it was enacted, That all Acts of Parliament made in *England* for punishing *Custumers*, *Controulers* and *Searchers*, for their Misdemeanors; or for Punishment of *Merchants* or *Factors*, be of force here in *Ireland*, provided they be first proclaimed at *Dublin*, *Drogheda*, and other Market Towns.

Thus we see by what Steps and Degrees, all the Statutes which were made in *England* from the Time of *Magna Charta*, to the 10th of *Henry the Seventh*, which did concern the common public Weal, were received, confirmed, allowed, and authorized to be of force in *Ireland*; all which was done by *Affent* of the *Lords Spiritual* and *Temporal*, and the *Commons* in the *Parliament* of *Ireland* assembled, and no otherwise.

* *Cook's 4th Instit.* cap. 76. p. 351.

† *Vid. Irish Stat.*

We shall next enquire, whether there are not other Acts of the *English* Parliament, both *before* and *since* the 10th of *Henry the Seventh*, which *were* and *are* of force in *Ireland*, though not allowed of by Parliament in this Kingdom. And we shall find, that by the Opinion of our best Lawyers, *there are divers such*; but then they are only such as are *declaratory* of the *ancient common Law of England*, and not *introductive of new Law*: For these become of force by the first general *Establishment* of the *common Laws of England* in this Kingdom, under *Henry the Second*, King *John* and *Henry the Third*; and need no particular Act of *Ireland* for their Sanction.

As to those *English Statutes* since the 10th of *Henry the Seventh*, that are *introductive* of a *new Law*, it was never made a Question whether they should bind *Ireland*, without being allowed in Parliament here; until of very late Years this Doubt began to be moved; and how it has been carried on and promoted, shall appear more fully hereafter.

I say, *until of very late Years*; for the *ancient Precedents* which we have to the contrary are very numerous. Amongst many, we shall mention the following particulars:

In the 12th of *Henry the 8th*, an Act was made in *England* making it Felony in a Servant

vant that runneth away with his Master's or Mistress's Goods. This Act was not received in *Ireland* until it was enacted by a Parliament held here in the 33d of *Henry the 8th*, c. 5. Sef. 1.

In the 21st of *Henry the Eighth*, c. 19. there was a Law made in *England*, That all Lords might distrain on the Lands of them holden, and make their Avowry not naming the Tenant, but the Land. But this was not of force in *Ireland* until enacted here in the 33d of *Henry the Eighth*, c. 1. Sef. 1.

An Act was made in *England*, Ann. 31 *Henry the Eighth*. That Joint-Tenants, and Tenents in Common, should be compelled to make Partition, as Coparceners were compellable at common Law. But this Act was not received in *Ireland* until enacted here, An. 33 *Henry the Eighth*, c. 10.

Anno 27 *Henry the Eighth*, c. 10. The Statute for transferring Uses into Possession was made in *England*; but not admited in *Ireland* until 10. Car. 1. Sef. 2.

In like manner, the *English* Statute 33 *Henry the Eighth*, c. 1. directing how Lands and Tenements may be disposed by Will, &c. was not of force in *Ireland* until 10 Car. 2. Sef. 2.

The Act of Uniformity of common Prayer and Admidistration of the Sacraments was

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made in *England* the 1st of *Eliz.* c. 2. but was not established in *Ireland* until the 2d of *Eliz.* c. 2. And so that of *England*, 14 *Car.* 2. c. 14. was not received in *Ireland* until 17 and 18 *Car.* 2. c. 6.

The Statute against wilful Perjury, made in *England* 5 *Eliz.* c. 9. was not enacted in *Ireland* until 28 *Eliz.* c. 1.

So the *English* Act against Witchcraft and Sorcery, but was not established in *Ireland* until the 2d of *Eliz.* c. 2. made 5 *Eliz.* c. 16. And another Act against Forgery, 5 *Eliz.* c. 14. were neither of them in force in *Ireland* until the 28th of her Reign, Cap. 3 and 4.

The *English* Statutes against Pirates was made the 28th of *Henry the Eighth*, c. 15. but in *Ireland* until the 12th of King *James*, c. 2.

In *England* an Act was made the 27th of *Eliz.* c. 4. against fraudulent Conveyance; but it was not in force in *Ireland* until enacted here the 10th of *Charles*, c. 3. Sess. 2.

In the 15th Year of King *Charles* the First, in a Parliament held at *Dublin*, there were six *English* Statutes made Laws of this Kingdom, with such Alterations as best fitted them to the State thereof, *viz.*

21 *Jac.* c. 14. for pleading the general Issue in Interventions brought by the King, by Chap. 1. of the *Irish* Statutes.

31 *Eliz.* c. 2. For abridging of Proclama-
tions on Fines, by Chap. 2.

2 and 3 *Ed.* 6. c. 8. concerning Offices
before the Escheator, by Chap. 4.

31 *Eliz.* c. 1. Discontinuance of Writs
of Error in the Exchequer Chamber, by
Chap. 5.

8 *Eliz.* c. 4. and 18 *Eliz.* c. 7. concerning
Clergy, by Chap. 7.

24 *Henry the Eighth,* c. 5. Concerning
killing a Robber, by Chap. 9.

There are six *English* Statutes likewise
passed in the Time of King *Charles the Se-
cond*, upon, and soon after the Restoration,
some of which were not passed into Laws
in *Ireland* until a Year, two or three, af-
terwards : As will appear by consulting the
Statute-Books *.

And in the first Year of *William and Mary*,
Ses. 2. c. 9. an Act passed in *England*, declar-
ing all *Attainders and other Acts made in the
late pretended Parliament under King James*,
at Dublin, void: But was not enacted here
in *Ireland* until the 7th Year of King *Wil-
liam*, c. 3. And this was thought requisite
to be done upon mature Consideration there-

* *Irish Stat.* 13 C. 2. c. 2. 13 C. 2. c. 3. 14 & 15 C. 2.
c. 1. 14 & 15 C. 2. c. 19. 17 & 18 C. 2. c. 3. 17 & 18
C. 2. c. 11. *English Stat.* 12. C. 2. c. 12. 12 C. 2. c. 3. 12
C. 2. c. 14. 12 C. 2. c. 24. 12 C. 2. c. 33. 16 & 17 C.
2. c. 5.

en before the King and Council of *England**, notwithstanding that the *English* Acts does particularly name *Ireland*, and was wholly designed for, and relates thereto.

The like may we find in several other Statutes of *England* passed since his present Majesty's Accession to the Throne, which have afterwards been passed here in *Ireland*, with such Alterations as make them practicable and agreeable to this Kingdom. Such as are amongst others, the Act for disarming *Papists*. The Act of *Recognition*. The Act for taking away *Clergy* from some Offenders. The Act for taking *special Bail* in the Country, &c. The Act against *Clandestine Mortgages*. The Act against *Curfing and Swearing*.

These, with many more, are to be found in our Statute-Books, in the several Reigns of *Henry* the Eighth, *Edward* the Sixth, Queen *Elizabeth*, King *James*, King *Charles* the First and Second, and King *William*. But it is not to be found in any Records in *Ireland*, that ever any Act of Parliament introductory of a new Law made in *England* since the Time of King *John*, was by the Judgment of any Court received for Law, or put in Execution in the Realm of *Ireland*,

* For we had two several Acts transmitted to us at different Times, to this very Purpose. One we rejected in the Lord *SYDNEY*'s Government, the other we passed under the Lord *CAPELL*.

before the same was confirmed and assented to by Parliament in *Ireland*.

And thus I presume we have pretty clearly made out our *fourth Enquiry* forementioned; and shewn plainly *the several Steps by which the English Form of Government, and the English Statute Laws were received in this Kingdom*; and that this was wholly by the *People's Consent in Parliament*, to which we have had a very *ancient Right*, and as full a Right as our next Neighbours can pretend to or challenge.

I shall now consider the Objections and Difficulties that are moved on this Head, drawn from Precedents and Passages in our Law-Books, that may seem to prove the contrary.

First it is urged, that in the Irish *Act, concerning Rape*, passed *Anno 8 Edward the Fourth, c. 1.* it is expressed, That a Doubt was conceived whether the *English Statute of the Sixth of Richard the 2d, c. 6.* ought to be of force in *Ireland*, without a Confirmation thereof in the Parliament of *Ireland*. Which shews (as some alledge) that even in those Days it was held by some, that an *Act of Parliament in England* might bind *Ireland* before it be consented to in Parliament here.

But I conceive this Gloss is raised meerly for want of expressing the Reason of the said Doubt in the Irish Statute of the 8th of

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of *Edward the Fourth, c. 1.* which we may reasonably judge was this. By the Statute of *Westminster the Second, c. 34.* a Woman that eloped from her Husband and lived with the Adulterer; or a Wife, that being first ravished, did afterwards consent and lived with the Ravisher, she should lose her Dower. This Statute of *Westminster the Second,* was made of Force in *Ireland,* by an Act passed here the 13th of *Edward the Second,* as we have seen before, page 68; 69. Afterwards, by the English Statute of the 6th of *Richard the Second, c. 6.* there was a farther Addition made to the said Statute of *Westminster the Second,* to this Effect, that a Maiden or Wife being ravished; and afterwards consenting to the Ravishers, as well the Ravisher as she that was ravished, shall be disabled to claim all Inheritance or Dower after the Death of her Husband or Ancestor.

On this Account the Doubt was here raised in *Ireland,* in the 8th of *Edward the Fourth, c. 1.* Whether this latter English Statute of the 6th of *Richard the Second, c. 6.* were not in Force in *Ireland,* by virtue of the Irish Statute of the 13th of *Edward the Second,* which confirmed the Statute of *Westminster the 2d. c. 34.* And for settling this Doubt the said Statute of the 8th of *Edward the Fourth, c. 1.* was passed in *Ireland;* and we find very good Reason for

for the said Doubt. For the *English Statute* of the 6th of *Richard the Second*, c. 6. contained but a small Addition to the Statute of *Westminster* the 2d. c. 34, and we see, that even this Addition itself was judged not to be of Force in *Ireland*, till enacted here. For the said *Irish Statute* of the 8th of *Edward the Fourth*, c. 1. makes the said Statute of the 6th of *Richard the Second*, c. 6. of Force in *Ireland* only from the 6th of *March*, then last past.

It is urged, secondly, that though perhaps such Acts of Parliament in *England*, which do not name *Ireland*, shall not be construed to bind *Ireland*; yet all such *English Statutes* as mention *Ireland*, either by the general Words of *all his Majesty's Dominions*, or by particularly naming of *Ireland*, are and shall be of Force in this Kingdom.

This being a Doctrine first broached directly (as I conceive) by *William Hussey*, Lord Chief Justice of the King's Bench in *England*, in the first Year of *Henry the Seventh*, and of late revived by the Lord Chief Justice *Cook*, and strongly urged, and much relied upon in these latter Days; I shall take the Liberty of enlarging thereon, though I venture thereby to swell this Pamphlet to a Size greater than I desire or designed.

First therefore, as to such *English Statutes* as seem to comprehend *Ireland*, and to bind it,

it, under the general Words of *all his Majesty's Dominions or Subjects*, whatever has been the Opinion of private and particular Lawyers in this Point, I am sure the Opinions of the Kings of *England* and their Privy-Council have been otherwise. It is well known since *Poyning's Act in Ireland*, the 10th of *Henry the Seventh*, no Act can pass in our Parliament here, till it be first assented to by the King and Privy-Council of *England*, and transmitted hither under the broad Seal of *England*: Now the King and his Privy-Council there have been so far from surmising, that an Act of Parliament of *England*, mentioning only in general *all the King's Dominions or Subjects*, should bind *Ireland*, that they have clearly shewn the contrary, by frequently transmitting to *Ireland*, to be passed into Laws here, *English Statutes*, wherein the general Words of *all the King's Dominions or Subjects* were contained; which would have been to no purpose, but merely *Actum Agere*, had *Ireland* been bound before by those *English Statutes*.

Of this I shall give the following Examples, amongst many others.

The Act of Parliament in *England* against Appeals to *Rome*, 24 *Henry the Eighth*, c. 12. by express Words extends to all his Majesty's Dominions; yet the same was not in Force, nor received in *Ireland* till it was

was enacted by Parliament there, the 28th of Henry the Eighth, c. 6.

In like manner the Statutes made in *England* concerning *first Fruits*, 26 *Henry the Eighth*, c. 3. and the *Act of Faculties* *, 25 *Henry the Eighth*, c. 21. though each of them, by express Words, comprise *all his Majesty's Subjects and Dominions*, were not received as Laws in *Ireland*, 'till the former was enacted there, 28 *Henry the Eighth*, c. 4. and the latter, 28 *Henry the Eighth*, c. 19. and so the Statute, restoring to the Crown all Jurisdiction ecclesiastical made in *England*, *Anno 1 Elizabeth*, c. 1. and therein giving Power to erect an ecclesiastical *High-Commission-Court* in *England* and *Ireland*, yet was not of Force in *Ireland* 'till enacted there, *Anno 2 Elizabeth*, c. 1. And though the said *English Act*, in relation to erecting such an *High-Commission-Court*, was repealed 17 *Charles I.* c. 11. and the Repeal confirmed the 13 *Charles the Second*, c. 12. And the late Bill of Rights, 1 *William and Mary*, Ses. 2. c. 2. in *England*, has damned all such Courts. Yet the *Act in Ireland*, 2 *Elizabeth*, c. 1. remains still in Force here; and so it was lately declared here by the Lord High-Chancellor *Porter*, Lord Chief Justice *Reynel*, Lord Chief-Baron *Hely*, Mr. Justice *Cox*, Mr. Justice *Jefferyson*, in the

* Title in the *English Statutes* is, *No Imposition shall be paid to the Bishop of Rome*.

Case of Dr. *Thomas Hacket*, late Bishop of *Down*, who was deprived of the said Bishopric by such a Commission, for great Enormities; the Commissioners being Dr. *Dopping*, late Bishop of *Meath*; Dr. *King*, the present Bishop of *Londonderry*; and Dr. *Wiseman*, late Bishop of *Dromore*.

And truly I see no more Reason for binding *Ireland* by the *English* Laws under the general Words of *all his Majesty's Dominions or Subjects*, than there is for binding *Scotland* by the same; for *Scotland* is as much his Dominion, and *Scotchmen* as much his Subjects, as *Ireland* and *Irishmen*. If it be said, that *Scotland* is an ancient, separate, and distinct Kingdom from *England*; I say, so is *Ireland*: The Difference is, *Scotland* continued separate from the Kings of *England*, till of late Years; and *Ireland* continued separate from *England* but a very little while in the Person of King *John*, before the Death of his Father, and of his Brother, *Richard the First*, without Issue. But then it is to be considered, that there was a Possibility, or even a Probability, that *Ireland* might have continued *separate* from the Crown of *England* even to this very Day, if *Richard the First* had left behind him a numerous Progeny.

Secondly, as to such *English* Statutes as particularly name *Ireland*, and are therefore said to be of force in this Kingdom, though never

never enacted here; I shall consider only the more ancient Precedents that are offered in confirmation of this Doctrine: For as to those of later Date, it is these we complain of, as bearing hard on the Liberties of this Country, and the *Rights* of our Parliaments, and therefore these ought not to be produced as Arguments against us. I presume, if I can shew that the ancient Precedents that are produced *do not conclude* against us; it will follow, that the modern Instances given *ought not to conclude* against us; that is to say plainly, these ought not to have been made as they are, as wanting Foundation both from Authority and Reason.

The ancient Precedents of *English* Statutes particularly naming *Ireland*, and said to be made in *England* with a Design of binding *Ireland*, are chiefly these three:

1. *Statutum Hiberniae*, 14 Henry the Third.
2. *Ordinatio pro Statu Hiberniae*, 17 Edward the First.
3. And the Act, that all Staple Commodities passing out of *England* or *Ireland*, shall be carried to *Callis*, as long as the Staple is at *Callis*, 2 Henry the Sixth, c. 4. on which *Hussey* delivered his Opinion, as we shall see more fully hereafter.

These Statutes, especially the two first, being made for *Ireland*, as their Titles import,

port, have given occasion to think, that the Parliament of *England* have a Right to make Laws for *Ireland*, without the Consent of their chosen Representatives. But if we enquire farther into this Matter, we shall find this Conclusion not fairly deduced.

First, the *Statutum Hiberniae*, 14. *Henry the Third*, as it is to be found in the Collection of *English Statutes*, is plainly thus : The Judges in *Ireland* conceiving a Doubt concerning Inheritances devolved to Sisters or Coheirs, *viz.* whether the younger Sisters ought to hold of the elder Sister, and do Homage to her for their Portions, or of the chief Lord, and do Homage unto him ; therefore *Girald Fitz-Maurice*, the then Lord Justice of *Ireland*, dispatched four Knights to the King in *England*, to bring a Certificate from thence of the Practice there used, and what was the common Law of *England* in that Case. Whereupon *Henry the Third*, in this his Certificate or Rescript, which is called *Statutum Hiberniae*, merely informs the Justice what the Law and Custom was in *England*, *viz.* that the Sisters ought to hold of the chief Lord, and not of the eldest Sister. And the Close of it commands, that *the aforesaid Customs that be used within our Realm of England in this Case, be proclaimed throughout our Dominion of Ireland, and be there observed. Teste me ipso apud Westminst. 9 Feb. An. Reg. 14.*

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From whence it is manifest, that this *Statutum Hiberniae* was no more than a Certificate of what the Common Law of *England* was in that Case, which *Ireland*, by the original Compact, was to be governed by. And shews no more, that therefore the Parliament of *England* may bind *Ireland*; than it would have proved, that the Commonwealth of *Rome* was subject to *Greece*; if, after *Rome* had received the Law of the twelve *Tables*, they had sent to *Greece* to know what the Law was in some special Case.

The Statute called *Ordinatio pro Statu Hiberniae*, made at *Nottingham*, the 17th of *Edward the First*, and to be found in *Pulton's Collection*, page 76. *Edit. Lond. 1670*, was certainly never received, or of Force in *Ireland*. This is manifest from the very first Article of that Ordinance, which prohibits the *Justice of Ireland, or others the King's Officers there, to purchase Land in that Kingdom, or within their respective Balliwicks, without the King's Licence, on Pain of Forfeitures*. But that this has ever been otherwise, and that the Lords Justices, and other Officers here have purchased Lands in *Ireland* at their own Will and Pleasure, needs no Proof to those who have the least Knowledge of this Country. Nor does it appear by any Inquisition, Office, or other Record,

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that any one ever forfeited on that Account.

Moreover this *Ordinatio pro Statu Hiberniae* is really in itself no Act of Parliament, but merely an Ordinance of the King and his Privy-Council in *England*; which appears as well from the Preamble to the said Ordinance, as from this Observation likewise, that King *Edward* the First held no Parliament in the 17th Year of his Reign: Or if this were a Parliament, this *Ordinatio pro Statu Hiberniae*, is the only Act thereof that is extant: But it is very improbable that only this single Ordinance should appear, if any such Parliament were called together.

Thirdly, as to the Staple Act, 2 *Henry* the Sixth, c. 4. which expressly names *Ireland*, and *Hussey's Opinion* thereon. The Case, as we find it in the Year-Books of *Mich. 2. Richard the Third*, fol. 11. and *Mich. 1 Henry the Seventh*, fol. 3. is in short thus: The Merchants of *Waterford* having shipped off some Wool, and consigned it to *Sluice* in *Flanders*, the Ship, by Stress of Weather, put into *Callis*, where Sir *Thomas Thwaits*, Treasurer of *Callis*, seized the said Wool as forfeited, half to himself, and half to the King, by the said Statute; hereupon a Suit was commenced between the said Merchants and the said Treasurer, which was brought before all the Judges of *England* into the Exchequer-Chamber: The Merchants

chants pleaded the King's Licence to the Citizens of Waterford and their Successors, for carrying Wool where they pleased ; and the Questions before the Judges were two, viz. *Whether this Staple Act binds Ireland ;* and secondly, *Whether the King could grant his Licence contrary to the Statute, and especially where the Statute gives Half the Forfeiture to the Discoverer ?*

The first Point only relates to our present Purpose ; and herein we find in the aforesaid Year-Book of 2 Richard the Third, fol. 12. to report it thus : *Et ibi (in the Exchequer-Chamber) quoad Primam Questionem dicebant quod Terr. Hibern. inter se habent Parliament. & omnimodo Cur. prout in Angl. & per idem Parliamentum faciunt Leges & Mutant Leges & non Obligantur per Statuta in Anglia, quia non hic habent Milites Parliamenti (and is not that an unanswerable Reason ?) sed hoc intelligitur de terris & rebus in terris illis tantum efficiendo ; sed Personæ eorum sunt Subjecti. Regis & tanquam Subjecti erunt Obligati ad aliquam rem extra. Terram illam faciend. contra Statut. sicut habitantes in Calefia Gascoignie, Guien, &c. dum fueri Subjecti ; & Obedientes erunt sub Admiral. Angl. de re fact. super altum Mare ; & similit. Brev. de Errore de Judicio reddit. in Hibern. in Banco Reg. hic in Angl.*

I have verbatim transcribed this Passage out of the aforesaid Year-Book, that I might

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be sure to omit nothing that may give the Objection its full Weight; and all that I can answer to it is this:

1. That when the aforesaid Case came a second Time under the Consideration of the Judges in the Exchequer-Chamber in Mich. 1 Henry the Seventh, fol. 3. we find it reported thus: *Hussey*, the Chief Justice, said, *That the Statutes made in England shall bind those of Ireland, which was not much gainsaid by the other Judges, notwithstanding that some of them were of a contrary Opinion the last Term in his Absence.* How the Presence and Opinion of the Chief Justice came to influence them now, I leave the Reader to judge.

2. That *Brook*, in abridging this Case of the first of Henry the Seventh, fol. 3. Tit. *Parliament*, Sec. 90. adds, *Tamen Nota, That Ireland is a Kingdom by itself, and bath Parliaments of its own*; intimating thereby, that therefore *Hussey's* Opinion herein was unreasonable.

3. That it is manifest, if *Hussey* mean by his Words, that *all* Acts of Parliament in *England* shall bind *Ireland*, it is directly contrary to the Judge's Opinion in the second of *Richard* the Third, before recited: For within the Land of *Ireland* they are all positive, that the Authority of the Parliament of *England* will not affect us. They seem at the utmost reach to extend the Jurisdiction

tion of the *English* Parliament over the Subjects of *Ireland*, only in relation to their Actions beyond Seas, out of the Realm of *Ireland*, as they are the King of *England's* Subjects; but even this will appear unreasonable, when we consider, that by the same Argumentation *Scotland* itself may be bound by *English* Laws in relation to their foreign Trade, as they are the King of *England's* Subjects. The Question is, whether *England* and *Ireland* be two distinct Kingdoms? And whether they have each their respective Parliaments; neither of which will be denied by any Man: And if so, there can be no Subordination on either Side, each is complete in its own Jurisdiction, and ought not to interfere with the other in any Thing. If being the King of *England's* Subjects be a Reason why we ought to submit to Laws (in relation to our Trade abroad, in Places where the Parliament of *England* has no Jurisdiction) which have not received our Assent; the People of *England* will consider whether they also are not the King's Subjects, and may therefore by this Way of reasoning, be bound by Laws which the King may assign them without their Assent, in relation to their Actions abroad, or foreign Trade; Or whether they had not been Subjects to the King of *France*, had our Kings continued their Possession of that Country, and there kept the Seat of the Monarchy;

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and then, had *France* been stronger than *England*, it might seem that the Subjects of these Kingdoms might have been bound by Laws made at *Paris*, without their own Consent. But let this Doctrine never be mentioned amongst the Free-born Subjects of these Nations.

Thus I have done with the three principal Instances that are usually brought against us, on the Stress that is laid on *English* Acts of Parliament, particularly naming *Ireland*.

There have been other Statutes or Ordinances made in *England* for *Ireland*, which may reasonably be of Force here, because they were made and assented to by our own Representatives. Thus we find in the White Book of the *Exchequer* in *Dublin*, in the 9th Year of *Edward the First*, a Writ sent to his Chancellor of *Ireland*, wherein he mentions *Quædam Statuta per nos de Assensu Prelatorum Comitum Baronum & Communitates Regni nostri Hiberniae, nuper apud Lincoln & quædam alia Statuta postmodum apud Eborum facta*. These we may suppose were either Statutes made at the Request of the States of *Ireland*, to explain to them the *Common Law* of *England*; or if they were introductory of new Laws, yet they might well be of force in *Ireland*, being enacted by the Assent of our own Representatives, the Lords Spiritual and Temporal, and Commons of *Ireland*; as the Words afore-mentioned do shew:

And

And indeed, these are Instances so far from making against our Claim, that I think nothing can be more plainly for us; for it manifestly shews, that the King and Parliament of *England* would not enact Laws to bind *Ireland*, without the Concurrence of the Representatives of this Kingdom.

Formerly, when *Ireland* was but thinly peopled, and the *English* Laws not fully current in all Parts of the Kingdom, it is probable, that then they could not frequently assemble with Conveniency or Safety to make Laws in their own Parliament at home; and therefore, during the Heats of Rebellions, or Confusion of the Times, they were forced to enact Laws in *England*. But then this was always by their proper *Representatives*: For we find, that in the Reign of *Edward* the Third, and by what foregoes, it is plain it was so in *Edward* the First's Time, Knights of the Shire, Citizens and Burgeesses were elected in the Shires, Cities, and Boroughs of *Ireland*, to serve in Parliament in *England*; and have so served accordingly. For amongst the Records of the Tower of *London*, Rot. Claus. 50. *Edward* the Third, Parl. 2. Memb. 23. we find a Writ from the King at *Westminster*, directed to *James Butler*, Lord Justice of *Ireland*, and to *R. Archbishop of Dublin*, his Chancellor, requiring them to issue Writs under the great Seal of *Ireland*, to the several Counties
Cities

Cities and Boroughs, for satisfying the Expences of the Men of that Land, *who last came over to serve in Parliament in England.* And in another Roll, the 50th of *Edward the Third, Membr.* 19, on Complaint to the King by *John Draper,* who was chosen Burgess of *Cork* by Writ, and served in the Parliament of *England,* and yet was denied his Expences by some of the Citizens, care was taken to reimburse him.

If from these last mentioned Records, it be concluded that the Parliament of *England* may bind *Ireland;* it must also be allowed, that the People of *Ireland* ought to have their Representatives in the Parliament of *England.* And this I believe we should be willing enough to embrace; but this is an Happiness we can hardly hope for,

This sending of Representatives out of *Ireland* to the Parliament in *England,* on some Occasions, was found in process of Time to be very troublesome and inconvenient; and this we may presume was the Reason that, afterwards, when Times were more settled, we fell again into our old Track, and regular Course of Parliaments in our own Country; and hereupon the Laws afore-noted, page 64, were enacted, establishing that *no Law made in the Parliament of England should be of Force in Ireland, till it was allowed and published in Parliament here.*

I have

I have said before, page 85, that I would only consider the *more antient Precedents* that are offered to prove, that Acts of *England* particularly naming *Ireland*, should bind us in this Kingdom; and indeed it were sufficient to stop here, for the Reason above alledged. However, I shall venture to come down lower, and to enquire into the modern Precedents of *English* Acts of Parliament alledged against us: But still with this Observation, that it is these we complain against as Innovations, and therefore they ought not to be brought in Argument against us.

I do therefore again assert, that before the Year 1641, there was no Statue made in *England* introductory of a *new Law* that interfered with the Right which the People of *Ireland* have to make Laws for themselves, except only those which we have before-mentioned, and which we have discussed at large, and submit to the Readers Judgment.

But in the Year 1641, and afterwards in *Cromwel's* Time, and since that, in King *Charles* the Second's Time; and again very lately, in King *William's* Reign, some Laws have been made in *England* to be of Force in *Ireland*. But how this came to pass we shall now enquire.

In the the 17th Year of King *Charles* the First, which was in the Year 1642, there were three or four Acts of Parliament made

in

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in *England* for encouraging Adventurers to raise Money for the speedy Suppression of the horrid Rebellion which broke out in *Ireland*, the 23d of *October*, 1641. The Titles of these Acts we have in *Pulton's Collections of Statutes*: But with this Remark, that they are made of no Force by the *Acts of Settlement and Explanation*, passed in King *Charles the Second's* Time in the Kingdom of *Ireland*. So that in these we are so far from finding Precedents for *England's* Parliament binding *Ireland*, that they plainly shew, that the Parliament of *Ireland* may repeal an Act passed in *England*, in relation to the Affairs of *Ireland*. For it is very well known, that Persons who were to have Interests and Titles in *Ireland* by virtue of those Acts passed in *England*, are cut off by the *Acts of Settlement and Explanation*. And indeed there is all the Reason in the World that it should be so, and that Acts made in a Kingdom by the legal Representatives of the People, should take place of those made in another Kingdom. But however, it will be said, that by those Acts it is manifest that *England* did presume they had such a Right to pass Acts binding *Ireland*, or else they had never done it. To which I answer, that, considering the Condition *Ireland* was in at that Time, viz. under an horrid intestine Rebellion, flaming in every Corner of the Kingdom; it was impossible

possible to have a Parliament of our own ; yet it was absolutely necessary that something should be done towards suppressing the Violences then raging amongst us : And the only Means could then be practised was for the Parliament of *England* to interpose, and do something for our Relief and Safety ; these were the best Assurances could be had at that Juncture. But when the Storm was over, and the Kingdom quieted, we see new Measures were taken in a legal Parliament of our own.

As to what was done for *Ireland* in the Parliament of *England* in *Cromwel's* Time, besides the Confusion and Irregularity of all Proceedings in those Days, which hinders any of them to be brought into Precedent in these Times. We shall find also, that then there were *Representatives* sent out of this Kingdom, who sat in the Parliament of *England*, which then was *only* the *House of Commons*. We cannot therefore argue from hence, that *England* may bind us ; for we see they allowed us *Representatives*, without which, they rightly concluded, they could not make Laws obligatory to us.

I come now to King's *Charles the Second's* Time, and in it we shall find the following *English Statute* made, in which the Kingdom of *Ireland* is concerned.

The first is an *Act against importing Cattle from Ireland or other Parts beyond Seas.* It was

was only temporary by 18 Charles the Second, c. 2. but made perpetual 20 Charles the Second, c. 7. and 32 Charles the Second, c. 2. This Act, however prejudicial to the Trade that was then carried on between *Ireland* and *England*, does not properly bind us, more than it does any other Country in the World. When any Thing is imported and landed in *England*, it becomes immediately subject to the Laws thereof; so that herein we cannot be said properly to be bound.

Secondly, the Acts against planting *Tobacco* in *England* and *Ireland*, 12 Charles the Second, c. 34. and 15 Charles the Second, c. 7. and 22 and 23 Charles the Second, c. 26, &c. do positively bind *Ireland*. But there has never been an Occasion of executing it here; for I have not heard that a Rood of *Tobacco* was ever planted in this Kingdom. But however, that takes not off the *Obligation* of the Law: It is only want of our Consent that I urge against that. I see no more Reason for sending a Force to trample down an Acre of *Tobacco* in *Ireland*, by these Statutes, than there would be for cutting down the Woods of *Shelela*, where there an Act made in *England* against our planting or having *Timber*.

Thirdly, the *Act for encouraging Shipping and Navigation, by express Name*, mentions and binds *Ireland*; and by the last Clause in the

the Act, obliges all Ships belonging thereto, importing any Goods from our foreign Plantations, to touch first at *England*.

Fourthly, the Acts prohibiting the Exportation of Wool from *Ireland* to any Country except to *England*, do likewise strongly bind us; and by the 12 *Charles the Second*, c. 32. it was made highly penal on us; and by the 14th of *Charles the Second*, c. 18. it is made Felony.

To these three last Acts I must confess I have nothing to urge to take off their Efficacy; *name* us they do most certainly, and bind us so, as we do not transgress them. But how rightfully they do this is the Matter in question. This I am sure of, that before these Acts in King *Charles the Second's* Time, (the eldest of which is not over thirty-seven Years) there is not one positive full Precedent to be met with in all the Statute Book of an English Act binding the Kingdom of *Ireland*. And on this Account we may venture to assert, that these are at least Innovations on us, as not being warranted by any former Precedents.

And shall Proceedings only of thirty-seven Years standing, be urged against a Nation to deprive them of the Rights and Liberties, which they enjoyed for five hundred Years before, and which were invaded without and against their Consent, and from that Day to this have been constantly complained of?

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Let any *English* Heart that stands so *justly* in Vindication of his own Rights and Liberties answer this Question, and I have done.

I am now arrived at our present Days, under the happy Government of his Majesty King *William* the Third; and I am sorry to reflect, that since the late Revolution in these Kingdoms, when the Subjects of *England* have more strenuously than ever asserted their own Rights, and the Liberty of Parliaments, it has pleased them to bear harder on their poor Neighbours than has ever yet been done in many Ages foregoing. I am sure what was then done by that wise and just Body of Senators was perfectly out of good Will and Kindness to us, under those Miseries which our afflicted Country of *Ireland* then suffered. But I fear some Men have since that, made use of what was then done, to other Purposes than at first intended. Let us now see what that was, and consider the Circumstances under which it was done.

In the Year 1689, when most of the Protestant Nobility, Gentry, and Clergy of *Ireland* were driven out of that Kingdom by the Insolencies and Barbarities of the *Irish Papists*, who were then in Arms throughout the Kingdom, and in all Places of Authority under King *James*, newly returned to them out of *France*; the only Refuge we had to fly

fly to was in *England*, where Multitudes continued for many Months, destitute of all Manner of Relief, but such as the Charity of *England* afforded, which indeed was very munificent, and never to be forgotten.

The Protestant Clergy of *Ireland* being thus banished from their Benifices, many of them accepted such small ecclesiastical Promotions in *England*, as the Benevolence of well-disposed Persons presented them with. But this being directly contrary to a Statute in this Kingdom, in the 17th and 18th of *Charles the Second*, cap. 10. intituled, *An Act for disabling of spiritual Persons from holding Benefices or other ecclesiastical Dignities in England or Wales, and in Ireland at the same Time*. The Protestant *Irish* Clergy thought they could not be too secure in avoiding the Penalty of the last-mentioned Act, and therefore applied themselves to the Parliament of *England*, and obtained an Act in the first Year of King *William* and Queen *Mary*, c. 29. intituled, *An Act for the Relief of the Protestant Irish Clergy*. And this was the first Attempt that was made for binding *Ireland* by an Act in *England*, since his Majesty's happy Accession to the Throne of these Kingdoms.

Afterwards, in the same Year, and same Session, chap. 34. there passed an Act in *England*, *Prohibiting all Trade and Commerce with France*, both from *England* and *Ireland*.

This also binds *Ireland*, but was during the Heat of the War in that Kingdom, when it was impossible to have a regular Parliament therein, all being in the Hands of the *Irish Papists*. Neither do we complain of it, as hindering us from corresponding with the King's Enemies, for it is the Duty of all good Subjects to abstain from that. But as *Scotland*, though the King's Subjects, claims an Exemption from all Laws but what they assent to in Parliament; so we think this our Right also.

When the banished Laity of *Ireland* observed the Clergy thus careful to secure their Properties, and provide for the worst, as well as they could in that Juncture, when no other Means could be taken by a regular Parliament in *Ireland*, they thought it likewise adviseable for them to do something in relation to their Concerns. And accordingly they obtained the *Act for the better Security and Relief of their Majesty's Protestant Subjects of Ireland*, 1 W. and M. Sess. 2. c. 9. Wherein King James's Irish Parliament at *Dublin*, and all Acts and Attainders done by them, are declared void. It is likewise thereby enacted, that no Protestant shall suffer any Prejudice in his Estate or Office, by reason of his Absence out of *Ireland* since December 25, 1685; and that there should be a Remittal of the King's Quit-Rent from the 25th of December, 1688, to the End of the

the War: Thus the Laity thought themselves secure.

And we cannot wonder, that during the Heat of a bloody War in this Kingdom, when it was impossible to secure our Estates and Properties by a regular Parliament of our own, we should have Recourse to this Means, as the only one which then could be had. We concluded with ourselves; that when we had obtained these Acts from the Parliament in *England*, we had gone a great Way in securing the like Acts to be passed in a regular Parliament in *Ireland*, whenever it shall please God to re-establish us in our own Country: For we well know our own Constitution under *Poyning's Law*, that no *Act could pass in the Parliament of Ireland till approved of by the King and Privy Council of England*. And we knew likewise, that all the Lords and others of his Majesty's Privy Council in *England* are Members of the Lords or Commons House of Parliament there. And that, by obtaining their Assent to Acts of Parliament in Favour of the *Irish* Protestants, they had in a manner pre-engaged their Assent to the like Bills, when they should hereafter come before them as Privy Counsellors, in order to be regularly transmitted to the Parliament of *Ireland*, there to be passed into Laws of that Kingdom. But instead of all this, to meet with another Construction of what was done

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herein, and to have it pleaded against us as a Precedent of our Submission, and absolute Acquiescence in the Jurisdiction of the Parliaments of *England* over this Kingdom, is what we complain of as an Invasion (we humbly conceive) of that *Legislative Right* which our Parliament of *Ireland*, claims within this Kingdom.

The next Act passed in the Parliament of *England*, binding *Ireland*, is that⁴ for *abrogating the Oath of Supremacy in Ireland, and appointing other Oaths*, 3 and 4 *William and Mary*, c. 2. To this the Parliament convened at *Dublin*, *Anno 1692*, under Lord *Sydney*, and that likewise, *Anno 1695*, under Lord *Capel*, paid an intire Obedience. And by this (it is alledged) we have *given up our Right*, if any we had, and have for ever acknowledged our *Subordination to the Parliament of England*. But let us a little consider the Force of this Argument.

I readily grant, that this and the other fore-mentioned Acts in *England* since the Revolution, when they were made, were looked upon highly in our Favour, and for our Benefit; and to them as *such*, we have conformed ourselves. But then, in all Justice and Equity, our Submission herein is to be deemed *purely voluntary*, and not at all proceeding from the *Right* we conclude thereby in the Legislators. If a Man, who has *no Jurisdiction* over me, *command* me to do a thing that is *pleasing* to me, and I do it;

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it will not thence follow, that thereby he obtains an *Authority* over me, and that ever hereafter I must obey him of *Duty*. If I *voluntarily* give my Money to a Man when I *please*, and think it *convenient* for me ; this does not authorise him at any Time to *command* my Money from me when *he pleases*. If it be said, this allows Subjects to obey, only whilst it is *convenient* for them ; I pray it may be considered, whether any Men obey *longer*, unless they be *forced* to it ; and whether they will not *free* themselves from this *Force* as soon as they can. It is impossible to hinder Men from desiring to *free themselves* from *Uneasiness*, it is a Principal of Nature, and cannot be eradicated. If submitting to an Inconvenience, be a *less* Evil than endeavouring to throw it off, Men will submit. But if the Inconvenience grow upon them, and be *greater* than the Hazard of getting rid of it, Men will offer at putting it by, let the Statesman or Divine say what they can.

But I shall yet go a little further, and venture to assert, that the Right of being subject *only* to such Laws to which Men give their own *Consent*, is so inherent to all Mankind, and founded on such immutable Laws of Nature and Reason, that it is not to be *aliened*, or *given up*, by any Body of Men whatsoever : For the End of all Government and Laws, being the public Good of the

Commonwealth, in the Peace, Tranquillity and Ease of every Member therein ; whatsoever Act is contrary to this End, is in it self void, and of no effect : And therefore for a Company of Men to say, *Let us unite ourselves into a Society, and let us be absolutely governed by such Laws, as such a Legislator, without ever consulting us, shall devise for us :* it is always to be understood, provided we find them for our Benefit : For to say, we will be governed by those Laws, *whether they be good or hurtful to us,* is absurd in itself : For to what End do Men join in Society, but to avoid Hurt, and the Inconveniencies of the State of Nature ?

Moreover, I desire it may be considered, whether the general Application of the chief Part of the Irish Protestants, that were at that Time in London, to the Parliament at Westminster, for obtaining these Laws, may not be taken for their Consent, and on that Account, and no other, these Acts may acquire their binding Force. I know very well, this cannot be looked upon as a regular and formal Consent, such as might be requisite at another more favourable Juncture : But yet it may be taken *talis qualis*, as far as their Circumstances at that Time would allow, until a more convenient Opportunity might present itself.

I am sure, if some such Considerations as these may not plead for us, we are of all his

his Majesty's Subjects the most unfortunate : The *Rights* and *Liberties* of the Parliament of *England* have received the greatest Corroboration since his Majesty's Accession to the Throne ; and so have the *Rights of Scotland* ; but the *Rights* of the People of *Ireland*, on the other Hand, have received the greatest Weakning under his Reign, by our Submission (as it is alledged) to these Laws that have been made for us.

This certainly was not the Design of his Majesty's glorious Expedition into these Kingdoms ; that, we are told by himself (whom we cannot possibly mistrust) was to assert the Rights and Liberties of these Nations ; and we do humbly presume that his Majesty will be graciously pleased to permit us to enjoy the Benefits thereof.

And thus I have done with the fourth Article proposed. As to the Fifth, viz. *The Opinions of the learned in the Laws relating to this Matter* ; it is in a great Measure dispatched by what I have offered on the fourth Head ; I shall therefore be the more brief thereon. And I think indeed the only Person of note that remains to be considered by us, is the Lord Chief Justice *Cook*, a Name of great Veneration with the Gentlemen of the Long Robe, and therefore to be treated with all Respect and Deference.

In his Seventh Report in *Calvin's Case*, he is proving, that *Ireland* is a Dominion

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separate and divided from *England*; for this he quotes many Authorities * out of the Year-Books and Reports; and amongst others, he has that which I have before-mentioned, page 91. 2. R. 3. f. 12. which he transcribes in this manner, *Hibernia habet Parliamentum, & faciunt Leges & nostra Statuta non ligant eos, quia non mittunt Milites ad Parliamentum*; and then adds, in a Parenthesis, (*which is to be understood, unless they be specially named*) *sed Personæ eorum sunt subjecti Regis sicut inhabitantes in Caleſia, Gasconia, & Guyan.* The first Thing I shall observe hereon, is the very *unfaithful* and *broken* Citation of this Passage, as will manifestly appear by comparing it with the true Transcript I have given thereof before, page 91. Were this all, it were in some Measure pardonable. But what cannot be excused, is the unwarrantable Position in his Parenthesis, without the least Colour or Ground for it in his Text. Herein he concludes down right magisterially, *So it must be, this is my definitive Sentence*; as if his plain Assertion, without any other Reason, ought to prevail; nay, even point blank against the irrefragable Reason of the Book he quotes. I confess in another Place of *Calvin's Case*, viz. Fol. 17. b. he gives this Assertion a Colour of Reason, by

* 20 H. 6. 8. *Pilkington's Case.* 32. H. 6. 25. 20 Eliz.
Dyer. 360. *Plowd. Com.* 360.

saying,

saying, *That though Ireland be a distinct Dominion from England, yet the Title thereof being by Conquest, the same by Judgment of Law might by express Words be bound by the Parliaments of England.* How far *Conquest* gives a Title, we have enquired before: But I would fain know, what Lord *Cook* means by *Judgment of Law*: Whether he means the *Law of Nature and Reason*, or of *Nations*; or the *Civil Laws* of our *Commonwealths*; in none of which Senses, I conceive, will he, or any Man, be ever able to make out his Position.

Is the Reason of *England's Parliament* not binding *Ireland*, because we do not send thither *Representatives*? And is the Efficacy of this Reason taken off, by our being named in an *English Act*? Why should sending *Representatives* to Parliament, bind those that send them? Merely because thereby the *Consent* of those that are bound, is obtained, as far as those sort of Meetings can possibly permit; which is the very *Foundation* of the *obligation* of all Laws. And is *Ireland's being named* in an *English Act* of Parliament, the least Step towards obtaining the *Consent* of the *People of Ireland*? If it be not, then certainly my Lord *Cook's Parenthesis* is to no purpose. And it is a Wonder to me, that so many Men have run upon this vain Imagination, merely from the Assertion of this Judge: For I challenge any Man to shew me, that any one *before him*, or any one *since*,

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but from him, has vended this *Doctrine*: And if the bare *Affection* of a Judge, shall bind a whole Nation, and dissolve the *Rights* and *Liberties* thereof, we shall make their Tongues very powerful, and constitute them greater Lawgivers than the greatest Senates. I do not see why my *denying it*, should not be as *authentic* as his *affirming it*. It is true, he was a great Lawyer and a powerful Judge; but had no more Authority to *make a Law*, than I or any Man else. But some will say, he was a learned Judge, and may be supposed to have *Reason* for his Position. Why then does he not give it us? And then what he asserts would prevail, not from the *Authority of the Person*, but from the *Force of the Reason*. The most learned in the Laws have no more Power to make or alter a Constitution, than any other Man; and their Decisions shall no farther prevail, than supported by Reason and Equity. I conceive my Lord Chief Justice *Cook* applied himself so wholly to the Study of the *Common Laws* of *England*, that he did not enquire far into the *Laws of Nature* and *Nations*; if he had, certainly he could never have been guilty of such an erroneous Slip; he would have seen demonstrably, that *Consent only* gives humane Laws their Force, and that therefore the Reason in the Case he quotes is unanswerable, *Quia non mittunt Milites ad Parliamentum*. Moreover, the Assertion of *Cook* in this Point is directly contrary to the whole

Tenor

Tenor of the Case which he cites : For the very Act of Parliament on which the Debate of the Judges did arise, and which they deemed not to be of Force in *Ireland*, particularly names *Ireland*. So that here again Lord Cook's Error appears most plainly. For this I refer to the Report, as I have exactly delivered it before, page 90, 91. by which it appears clearly to be the unanimous Opinion of all the Judges then in the *Exchequer Chamber* : That within the Land of *Ireland*, the Parliaments of *England* have no Jurisdiction, whatever they may have over the Subjects of *Ireland* on the open Seas : And the Reason is given, *Quia Hibernia non mittit Milites ad Parliamentum in Anglia*.

This Assertion likewise is inconsistent with himself in other Parts of his Works. He tells us in his 4th Inst. page 349. *That it is plain that not only King John (as all Men allow) but Henry the Second also, the Father of King John, did ordain and command, at the instance of the Irish, that such Laws as had been in England should be observed, and of Force in Ireland, Hereby Ireland being of itself a distinct Dominion, and no Part of the Kingdom of England, was to have Parliaments holden there as in England.* And in page 12. he tells us, *that Henry the Second sent a Modus into Ireland, directing them how to hold their Parliaments.* But to what End was all this, if *Ireland* nevertheless were subject to the Parliament of *England*? The King and Parliaments of these

these Kingdoms are the supreme Legislators; if *Ireland* be subject to two, (its own, and that of *England*) it has *two Supremes*; it is not impossible, but they may enact *different or contrary Sanctions*; which of these shall the People obey? He tells us in *Calvin's Case*, Fol. 17. b. *That if a King hath a Christian Kingdom by Conquest, as Henry the Second had Ireland, after King John had given to them, being under his Obedience and Subjection; the Laws of England for the Government of that Country: No succeeding King could alter the same without Parliament.* Which, by the way, seems directly contradictory to what he says concerning *Ireland*, six Lines below this last cited Passage. So that we may observe my Lord *Cook* enormously stumbling at every Turn in this Point.

Thus I have done with this reverend Judge; and in him, with the only *positive Opinion against us*. I shall now consider what our Law Books offer in our *Favour* on this Point.

To this purpose we meet a Case fully opposite, reported in the Year-Book of the 20th of *Henry the Sixth*, Fol. 8. between one *John Pilkington*, and one *A.*

Pilkington brought a *Scire Facias* against *A.* to shew Cause, why Letters Patents, whereby the King had granted an Office in *Ireland* to the said *A.* should not be repealed, since the said *Pilkington* had the same Office granted

granted to him by former Letters Patents of the same King, to be occupied by himself or his Deputy. Whereupon *A.* pleaded, that the Land of *Ireland*, Time-out of Memory, hath been a Land separated and distinct from the Land of *England*, and ruled and govered by the Customs of the same Land of *Ireland*. That the Lords of the same Land, which are of the King's Council, have used from time to time, in the Absence of the King, to elect a *Justice*, who hath Power to pardon and punish all Felons, &c. and to call a Parliament, and by the Advice of the Lords and Commonalty to make Statutes. He alledged further, that a Parliament was assembled, and that it was ordained by the said Parliament*, that every Man who had an Office within the said Land, before a certain Day, shall occupy the said Office by himself, otherwise he should forfeit. He shewed that *Pilkington* occupied by a Deputy; and that therefore his Office was void, and that the King had granted the said Office to him the said *A.* Hereupon *Pilkington* demurred in Law; and it was debated by the Judges, *Velverton*, *Fortescue*, *Portington*, *Markbam*, and *Ascough*, whether the said Prescription in relation to the State and Government of

* This Statute we may reckon amongst the Number of those that are lost during the long Intervals of our *Irish* Acts, noted before, page 65. to be about 118 Years.

Ireland, be good or void in Law. *Yelverton* and *Portington* held the Prescription void. But *Fortescue*, *Markham*, and *Ascough* held the Prescription good, and that the Letters Patents made to *A.* were good, and ought not to be repealed. And in this it was agreed by *Fortescue* and *Portington*, that if a Tenth or Fifteenth be granted by Parliament in *England*, that shall not bind *Ireland*, although the King should send the same Statute into *Ireland* under his great Seal; except they in *Ireland* will in their Parliament approve it; because they have not any Commandment by Writ to come to the Parliament of *England*: And this was not denied by *Markham*, *Yelverton*, or *Ascough*.

The *Merchants of Waterford's Case*, which I have observed before, page 68, as reported in the Year-Boek of the 2d of *Richard the Third*, fol. 11, 12, is notorious in our Behalf, but needs not be here repeated.

The Case of the Priory of *Lanthony* in *Wales*, mentioned by Mr. *Pryn* against the 4th Instit. ch. 76, page 313, is usually cited against us. But I conceive it is so far from proving this, that it is very much in our Behalf. The Case was briefly thus. The Prior of *Lanthony* brought an Action in the Common Pleas of *Ireland* against the Prior of *Mollingar*, for an Arrear of an Annuity, and Judgment went against the Prior of *Mollingar*; hereon the Prior of *Mollingar* brought a Writ of Error in the King's-Bench of *Ireland*,

land, and the Judgment was affirmed. Then the Prior of *Mollingar* appealed to the Parliament of *Ireland*, held 5 *Henry the Sixth*, before *James Butler, Earl of Ormond*, and the Parliament reversed both Judgments. The Prior of *Lanthony* removed all into the *King's-Bench* in *England*; but the *King's-Bench* refused to intermeddle, as having no Power over what passed in the Parliament of *Ireland*. Hereupon the Prior of *Lanthony* appealed to the Parliament of *England*. And it does not appear by the Parliament-Roll * that any Thing was done on this Appeal; all that is entered being only the Petition itself at the End of the Roll. *Vid. Pryn against chap. 76, page 313.*

Now whether this be a Precedent proving the Subordination of our *Irish* Parliament to that of *England*, I leave the Reader to judge. To me it seems the clear contrary. For, first, we may observe the *King's-Bench* in *England* absolutely disclaiming any Cognizance of what hath passed in the Parliament of *Ireland*. And next we may observe, that nothing at all was done therein upon the Appeal to the Parliament of *England*: Certainly if the Parliament of *England* had thought themselves to have a Right to enquire into this Matter, they had

* *Rot. Parl. An. 8 Henry the Sixth, in ult.*

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so done, one way or the other, and not left the Matter undetermined and in suspence.

It has ever been acknowledged that the Kingdom of *Ireland* is inseparably annexed to the Imperial Crown of *England*. The Obligation that our Legislature lies under by *Poyning's Act*, 10 *Henry the Seventh*, c. 4. Makes this Tye between the two Kingdoms indissoluble. And we must ever own it our Happiness to be thus annexed to *England*: And that the Kings and Queens of *England*, are by undoubted Right, *ipso facto* Kings and Queens of *Ireland*. And from hence we may reasonably conclude, that if any Acts of Parliament made in *England* should be of Force in *Ireland*, before they are received there in Parliament, they should be more especially such Acts as relate to the *Succession* and *Settlement of the Crown*, and *Recognition* of the King's Title thereto, and the *Power* and *Jurisdiction* of the King. And yet we find in the *Irish Statutes*, 28 *Henry the Eighth*, c. 2. *An Act for the Succession of the King and Queen Anne*; and another, Chap. 5. declaring the King to be *supreme Head of the Church of Ireland*; both which Acts had formerly passed in the Parliament of *England*. So likewise we find amongst the *Irish Statutes*, *Acts of Recognition of the King's Title to Ireland*, in the Reigns of *Henry the Eighth*, *Queen Elizabeth*, *King James*, *King Charles the Second*,

King

King *William* and Queen *Mary*. By which it appears, that *Ireland*, though annexed to the Crown of *England*, has always been looked upon to be a *Kingdom complete within itself*, and to have all Jurisdiction to an absolute Kingdom, belonging, and subordinate to no legislative Authority on Earth. Though it is to be noted, these *English Acts* relating to the Succession, and Recognition of the King's Title, do particularly name *Ireland*.

As the *civil State* of *Ireland* is thus *absolute* within itself, so likewise is our *State ecclesiastical*; this is manifest by the *Canons* and *Constitutions*, and even by the *Articles* of the *Church of Ireland*, which differ in some Things from those of the *Church of England*. And in all the Charters and Grants of Liberties and Immunities to *Ireland*, we still find this, that *Holy Church shall be free*, &c. I would fain know what is meant here by the Word *free*: Certainly if our *Church* be *free*, and absolute within itself, our *State* must be so likewise; for how our *civil* and *ecclesiastical* Government is now interwoven, every Body knows. But I will not enlarge on this Head, it suffices only to hint it; I shall detain myself to our *civil* Government.

Another Argument against the Parliament of *England's* Jurisdiction over *Ireland*, I take from a Record in *Reyley's Placita Parliamentaria*,

mentaria, page 569, to this Effect * : In the 14th of Edward the Second, the King sent his Letters Patents to the Lord Justice of *Ireland*, letting him know, that he had been moved by his *Parliament* at *Westminster*, that he would give Order that the *Irish Natives* of *Ireland* might enjoy the Laws of *England* concerning *Life* and *Member*, in as large and ample Manner as the *English* of *Ireland* enjoyed the same. This therefore the King gives in Commandment, and orders accordingly, by these his Letters Patents. From hence, I say, we may gather, that the *Parliament* of *England* did not then take upon them to have any *Jurisdiction* in *Ireland*, (for then they would have made a Law for *Ireland* to this Effect) but instead thereof, they apply to the King, that he would interpose his Commands, and give Directions that this great Branch of the Common Law of *England* should be put in Execution in *Ireland*, indifferently to all the King's Subjects there, *pursuant* to the original *Compact* made with them on their first Submission to the Crown of *England*.

Let us now consider the great Objection drawn from a Writ of *Error*'s lying from the *King's-Bench* of *England*, on a Judgment given in the *King's-Bench* in *Ireland*; which proves (as it is insisted on) that there is a

* 14 Edward the Second, Par. 2. Memb. 21 Int.

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Subordination of Ireland to England; and that if an inferior Court of Judicature in *England* can thus take Cognizance of, and over-rule the Proceedings in the like Court of *Ireland*; it will follow, that the *supreme* Court of Parliament in *England* may do the same, in relation to the Proceedings of the Court of Parliament in *Ireland*.

It must be confessed that this hath been the constant Practice; and it seems to be the great Thing that induced my Lord *Cook* to believe, that an Act of Parliament in *England*, and mentioning or including *Ireland*, should bind here. The Subordination of *Ireland* to *England*, he seems to infer from the Subordination of the *King's-Bench* of *Ireland* to the *King's-Bench* of *England*. But to this I answer:

1. That it is the Opinion of several, learned in the Laws of *Ireland*, that this Removal of a Judgment from the *King's-Bench* of *Ireland*, by *Writ of Error*, into the *King's-Bench* of *England*, is founded on an Act of Parliament in *Ireland*, which is lost amongst a great Number of other Acts, which we want for the Space of 130 Years at one Time, and of 120 at another Time, as we have noted before, page 58. But it being only a *general Tradition* that there was such an Act of our Parliament, we only offer it as a *Surmise*, the Statute itself does not appear.

2. Where a Judgment in *Ireland* is removed, to be reversed in *England*, the Judges in *England* ought, and always do judge, according to the Law and Customs of *Ireland*, and not according to the Laws and Customs of *England*, any otherwise than as these may be of Force in *Ireland*; but if in any Thing the two Laws differ, the Law of *Ireland* must prevail, and guide their Judgment. And therefore in the Case of one *Kelly*, removed to the King's-Bench in *England*, in the Beginning of King *Charles* the First, one Error was assigned, that the *Præcipe* was of *Woods* and *Underwoods*, which is a manifest Error, if brought in *England*; but the Judges finding the Use to be otherwise in *Ireland*, judged it no Error. So in *Crook, Charles*, fol. 511. *Mulcarry* vers. *Eyres*. Error was assigned, for that the Declaration was of one hundred Acres of *Bogg*, which is a Word not known in *England*; but it was said, it was well enough understood in *Ireland*, and so adjudged no Error.

From whence, I conceive, it is manifest, that the Jurisdiction of the King's-Bench in *England*, over a Judgment in the King's-Bench of *Ireland*, does not proceed from any Subordination of one Kingdom to the other; but from some other Reason, which we shall endeavour to make out.

3. We have before observed, that in the Reign of King *Henry the Third*, *Gerald Fitz-Maurice*, Lord Justice of *Ireland*, sent four Knights

Knights to know what was held for Law in *England* in the Case of *Coparceners*. The Occasion of which Message (as before we have noted out of the King's Rescript) was because the King's Justice of *Ireland* was ignorant what the Law was. We may reasonably imagine that there were many Messages of this Kind; for in the Infancy of the *English* Government, it may well be supposed, that the Judges in *Ireland* were not so deeply versed in the Laws of *England*: This occasioned Messages to *England*, before Judgment given in *Ireland*, to be informed of the Law. And after Decrees made, Persons who thought themselves aggrieved by erroneous Judgments, applied themselves to the King in *England* for Redress. Thus it must be, that Writs of Error (unless they had their Sanction in Parliament) became in use. Complaints to the King by those that thought themselves injured, increased; and at last grew into Custom, and obtained the Force of Law.

Perhaps it may be objected, that if the Judges of the *King's-Bench* in *England* ought to regulate their Judgment by the Customs of *Ireland*, and not of *England*, it will follow, that this Original which we assign of Writs of Error to *England*, is not right.

I answer, that this may be the *primary Original*, and yet consist well enough with what we have before laid down: For though

the Common Law of *England* was to be the Common Law of *Ireland*, and *Ireland*, at the Beginning of its *English* Government, might frequently send into *England* to be informed about it; yet this does not hinder, but *Ireland*, in a long Process of Time, may have some smaller Customs and Laws of its own, gradually, but insensibly crept into Practice, that may in some measure differ from the Customs and Practice of *England*; and where there is any such, the Judges of *England* must regulate their Sentence accordingly, though the first Rise of Writs of Error to *England* may be as we have here suggested. In like manner, where the Statute Law of *Ireland* differs from that of *England*, the Judges of *England* will regulate their Judgments by the Statute Law of *Ireland*: This is the constant Practice, and notoriously known in *Westminster-Hall*: From which it appears, that removing a Judgment from the *King's-Bench* of *Ireland* to the *King's-Bench* of *England*, is but an Appeal to the King in his *Bench* of *England*, for his Sense, Judgment, or Exposition of the Laws of *Ireland*. But of this more hereafter.

4. When a Writ of *Error* is returned into the *King's-Bench* of *England*, Suit is made to the King only; the Matter lies altogether before him; and the Party complaining applies to no Part of the political Government

vernment of *England* for Redress, but to the *King of Ireland only*, who is in *England*: That the King only is sued to, our Law-Books make plain. This Court is called *Curia Domini Regis*, and *Aula Regia*, because the King used to sit there in Person, as *Lambard* tells us; and every Cause brought there is said to be *coram Domino Rege*, even at this very Day, *Cook*, 4 Inst. page 72. Therefore if a Writ be returnable *coram nobis ubicunque fuerimus*, it is to be returned to the *King's-Bench*. But if it be returnable *coram Justiciariis nostris apud Westm.* it is to be returned into the *Common-Pleas*. This Court (as *Glanvil* and other Ancients tell us) used to travel with the King, wherever he went. And *Fleta*, in describing this Court, says, *Habet Rex Curiam suam & Justiciarios suos, coram quibus, & non alibi nisi coram semet ipso, &c. falsa Judicia & Errores revertuntur & Corriguntur*. The King then (as *Britton* says) having supreme Jurisdiction in his Realm, to judge in all Causes whatsoever; therefore it is, that *erroneous Judgments* were brought to him out of *Ireland*. But this does not argue that *Ireland* is therefore *subordinate to England*; for the People of *Ireland* are the Subjects of the King to whom they appeal. And it is not from the *Country* where the Court is held, but from the *Presence* and *Authority* of the King (to whom the People of *Ireland* have as good a Title as the People

of *England*) that the *Pre-eminence* of the *Jurisdiction* does flow, and I question not, but in former Times, when these Courts were first erected, and when the King exerted a greater Power in Judicature than he does now, and he used to sit in his own Court, that if he had travelled into *Ireland*, and the Court had followed him thither, erroneous Judgments might have been removed from *England*, before him into his *Court in Ireland*; for so certainly it must be, since the Court travelled with the King. From hence it appears, that all the Jurisdiction that the *King's-Bench* in *England* has over the *King's-Bench* in *Ireland*, arises only from the King's *Presence* in the former. And the same may be said of the *Chancery* in *England*, if it will assume any Power to controul the *Chancery* in *Ireland*; because, as *Lambard* says, page 69, 70, the *Chancery* did follow the King, as the *King's-Bench* did; and that, as he tells us, out of the Lord Chief Justice *Sarvope*, the *Chancery* and the *King's-Bench* were once but one Place. But if this be the Ground of the Jurisdiction of the *King's-Bench* in *England* over the *King's-Bench* in *Ireland*, (as I am fully persuaded it is) the Parliament in *England* cannot from hence claim any Right of Jurisdiction in *Ireland*, because they claim a *Jurisdiction* of their own; and their Court is not the

the King's Court in that proper and strict Sense that the King's-Bench is.

But granting that the Subordination of the King's-Bench in *Ireland* to the King's-Bench in *England* be rightly concluded from a *Writ of Error* out of the latter, lying on a Judgment in the former; I see no Reason from thence to conclude, that therefore the Parliament of *Ireland* is subordinate to the Parliament in *England*, unless we make any one Sort of Subordination, or in any one Part of Jurisdiction, to be a Subordination in *all Points*, and all Parts of Jurisdiction. The Subjects of *Ireland* may appeal to the King in his *Bench* in *England*, for the expounding of the old Common and Statute Law of *Ireland*; will it therefore follow, that the Parliament of *England* shall make new Laws to bind the Subjects in *Ireland*? I see no manner of Consequence in it; unless we take *expounding old Laws*, (or *Laws already made*) in the King's-Bench, and *making new Laws in Parliament* to be one and the same Thing. I believe the best Logician in Europe will hardly make a Chain of *Syllogisms*, that from such *Premises* will regularly induce such a *Conclusion*.

To close this Point, we find that a Judgment of the King's-Bench in *Ireland* may be removed by a *Writ of Error* to the Parliament in *Ireland*: But the Judgment of the Parliament of *Ireland* was never questioned in

in the Parliament of *England*. This appears from the *Prior of Lanthonys Case* aforesaid.

I shall conclude this our fifth Article with a memorable Passage out of our *Irish Statutes*, which seems to strengthen what we have delivered on the Business of a *Writ of Error*, as well as the chief Doctrine I drive at; and that is 28 *Henry the Eighth*, chap 19, the *Act of Faculties*. This Statute is a Recital at large of the *English Act* of the 25th of *Henry the Eighth*, c. 21. In the Preamble of which *English Act* it is declared, *That this your Grace's Realm recognizing no Superior but your Grace, hath been, and yet is free from any Subjection to any Man's Laws, but only such as have been devised within this Realm, for the Wealth of the same, or to such others, as by Sufferance of your Grace and your Progenitors, the People of the Realm have taken at their free Liberties by their own Consent; and have bound themselves by long Use and Custom to the Observance of, &c.*

This Declaration, with the other Clauses of the said *English Act*, is verbatim recited in the *Irish Act of Faculties*; and in the said *Irish Act* it is enacted, *That the said English Act, and every Thing and Things therein contained, shall be established, affirmed, taken, obeyed and accepted within this Land of Ireland as a good and perfect Law, and shall be within the said Land of the same Force, Effect, Quality, Condition, Strength and Virtue, to all Purposes*

Purposes and Intents, as it is within the Realm of England; (if so, then the said Clause declares our Right of being bound only by Laws to which we consent, as it does the Right of the People of England) And that all Subjects within the said Land of Ireland shall enjoy the Profit and Commodity thereof in like manner as the King's Subjects of the Realm of England.

I am now arrived at our Sixth and last Article proposed, viz. the *Reasons and Arguments that may be farther offered on one Side and the other in this Debate.*

I have before taken Notice of the Title *England* pretends over us from *Conquest*: I have likewise enquired into the *Precedents* on one Side and the other, from *Acts of Parliament*, from *Records*, and from *Reports* of the learned in the Laws. There remains another Pretence or two for this *Subordination* to be considered; and one is founded on *Purchase*.

It is said, that vast Quantity of Treasure, that from time to time has been spent by *England* in reducing the Rebellions, and carrying on the Wars of *Ireland*, has given them a just Title at least to the *Lands* and *Inheritances* of the Rebels, and to the absolute Disposal thereof in their Parliament; and as particular Examples of this, we are told of the great Sums advanced by *England* for suppressing the Rebellion of the *Irish Papists*

Papists in 41, and opposing the late Rebellion since King WILLIAM's Accession to the Throne.

To this I answer, that in a War there is all Reason imaginable that the Estates of the unjust Opposers should go to repair the Damage that is done. This I have briefly hinted before. But if we consider the Wars of *Ireland*, we shall perceive they do not resemble the common Case of Wars between two foreign Enemies; ours are rather Revbellions, or *intestine Commotions*; that is, the *Irish Papists* rising against the *King and Protestants of Ireland*; and then it is plain, that if these latter, by the Assistance of their Brethren of *England*, and their Purse, do prove Victorious, the People of *England* ought to be fully repaid: But then the Manner of their Payment, and in what Way it shall be levied, ought to be left to the People of *Ireland* in Parliament assembled: And so it was after the Rebellion of 41. The *Adventurers* then were at vast Charges, and there were several Acts of Parliament in *England* made for their Reimbursing, by disposing to them the Rebel's Lands. But after all, it was thought reasonable that the Parliament of *Ireland* should do this in their own Way; and therefore the *Acts of Settlement* and *Explanation* made all the former *English Acts of no Force*; or at least did very much alter them in many Particulars, as we have

have noted before. In like manner we allow that *England* ought to be repaid all their Expences in suppressing this late Rebellion : All we desire is, that, in Preservation of our own Rights and Liberties, we may do it in our own Methods regularly in our own Parliament: And if the Reimbursement be all that *England* stands upon, what availeth it whether it be done this Way or that Way, so it be done? We have an Example of this in Point between *England* and *Holland* in the glorious Revolution under King *William* the Third: *Holland*, in assisting *England*, expended 600000 Pounds, and the *English* Parliament fairly repaid them: It would have looked odly for *Holland* to have insisted on disposing of Lord *Powis's* and other Estates by their own Laws, to reimburse themselves.

It is an ungenerous Thing to villify good Offices, I am far from doing it, but with all possible Gratitude acknowledge the mighty Benefits *Ireland* has often received from *England*, in helping to suppress the Rebellions of this Country; to *England's* charitable Assistance our Lives and Fortunes are owing: But with all humble Submission, I desire it may be considered, whether *England* did not at the same Time propose the *Prevention of their own Danger* that would necessarily have attended our Ruin; if so,
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it was in some Measure their *own Battles* they fought, when they fought for *Ireland*; and a great of their Expence must be reckoned in their *own Defence*.

Another Thing alledged against *Ireland* is this; if a foreign Nation, as *France* or *Spain* for instance, prove prejudicial to *England*, in its Trade, or any other Way; *England*, if it be stronger, redresses itself by Force of Arms, or denouncing War; and why may not *England*, if *Ireland* lies cross their Interests, restrain *Ireland*, and bind it by Laws, and maintain these Laws by Force?

To this I answer: *First*, that it will hardly be instanced, that any Nation ever declared War with another, merely for over-topping them in some signal Advantage, which otherwise, or but for their Endeavours, they might have reaped. *War* only is justifiable for *Injustice* done, or *Violence* offered, or *Rights* detained. I cannot by the Law of Nations, quarrel with a Man, because he, going before me in the Road, finds a Piece of Gold, which possibly, if he had not taken it up, I might have light upon and gotten. It is true, we often see Wars commenced on this Account *under-hand*, and on Emulation in Trade and Riches; but then this is never made the *open Pretence*, some other Colour it must receive, or else it would not look *fair*; which shews plainly

plainly, that this Pretence of *being prejudicial*, or of reaping Advantages which otherwise you might partake of, is not *justifiable* in itself. But granting that it were a good Justification of a War with a *foreign Nation*, it will make nothing in the Case between *England* and *Ireland*; for if it did, why does it not operate in the same manner between *England* and *Scotland*, and consequently in like manner draw after it *England's* binding *Scotland* by their Laws at *Westminster*? We are all the *same King's Subjects*, the Children of one *common Parent*; and though we may have our *distinct Rights and Inheritances* absolutely within ourselves; yet we ought not, when these do chance a little to interfere to the Prejudice of one or the other Side, immediately to treat one another as *Enemies*; fair amicable Propositions should be proposed, and when these are not hearkened to, then it is Time enough to be at *Enmity*, and use Force.

The last Thing I shall take Notice of, that some raise against us, is, that *Ireland* is to be looked upon only as a *Colony* from *England*: And therefore as the *Roman Colonies* were subject to, and bound by, the Laws made by the *Senate at Rome*; so ought *Ireland* by those made by the *Great Council at Westminster*. Of all the Objections raised against us, I take this to be the most extravagant; it seems not to have the least *Foundation*.

tion or Colour from Reason or Record: Does it not manifestly appear by the *Constitution of Ireland*, that it is a *compleat Kingdom* within itself? Do not the Kings of *England* bear the *Stile of Ireland* amongst the rest of their Kingdoms? Is this agreeable to the Nature of a *Colony*? Do they use the Title of Kings of *Virginia*, *New England*, or *Mary-land*? Was not *Ireland* given by *Henry the Second* in a Parliament at *Oxford* to his Son *John*, and made thereby an *absolute Kingdom, separate and wholly independent* on *England*, until they both came united again in him, after the Death of his Brother *Richard* without Issue? Have not Multitudes of A&cts of Parliament both in *England* and *Ireland*, declared *Ireland a compleat Kingdom*? Is not *Ireland* stiled in them all, the *Kingdom, or Realm of Ireland*? Do these Names agree to a *Colony*? Have we not a Parliament, and Courts of Judicature? Do these *Things* agree with a *Colony*? This on all hands involves so many Absurdities, that I think it deserves nothing more of our Consideration.

These being the only remaining Arguments that are sometimes mentioned *against us*, I now proceed to offer what I humbly conceive *demonstrates* the Justice of our Cause:

And herein I must beg the Reader's Patience, if now and then I am forced lightly to touch upon some Particulars foregoing.

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I shall endeavour all I can to avoid prolix Repetitions ; but my Subject requires, that sometimes I just mention, or refer to several Notes before delivered.

First therefore, I say, that Ireland should be bound by *Acts of Parliament made in England, is against Reason and the common Rights of all Mankind.*

All Men are by Nature in a State of Equality, in respect of Jurisdiction or Dominion : This I take to be a Principle in itself so evident, that it stands in need of little Proof. It is not to be conceived, that Creatures of the same Species and Rank, promiscuously born to all the same Advantages of Nature, and the Use of the same Faculties, should be subordinate and subject one to another ; these to this or that of the same Kind. On this Equality in Nature is founded that Right which all Men claim of being free from all Subjection to positive Laws, until by their own *Consent* they give up their Freedom, by entering into civil Societies for the common Benefit of all the Members thereof. And on this *Consent* depends the *Obligation* of all *human Laws* ; insomuch that without it, by the unanimous Opinion of all *Jurists*, no Sanctions are of any *Force*. For this let us appeal, amongst many, only to the *judicious* Mr. *Hooker's Eccles. Polity*, Book 1. Sect. 10. *Lond. Edit. 1676.* Thus he :

Howbeit, Laws do not take their constrainting Force from the Quality of such as devise them, but from that Power which doth give them the strength of Laws. That which we speake before, concerning the Power of government, must here be applied to the Power of making Laws whereby to Govern, which Power God hath over all; and by the natural Law, whereunto he hath made all subject, the lawful Power of making Laws, to command whole politic Societies of Men, belongeth so properly unto the same entire Societies, that for any Prince or Potentate, of what kind soever upon Earth, to exercise the same of himself, and not either by express Commission immediately and personally received from God, or else by Authority derived at the first from their Consent, upon whose Persons they impose Laws, it is no better than meer Tyranny. Laws they are not therefore, which public Approbation hath not made so: But Approbation not only they give, who personally declare their assent by Voice, Sign, or Act, but also when others do it in their Names, by Right, originally, at the least, derived from them: As in Parliaments, Councils, &c.

Again, Sith Men naturally have no full and perfect Power to command whole politic Multitudes of Men; therefore utterly without our Consent, we could in such sort be at no Man's Commandment living. And to be commanded, we do consent, when that Society whereof we are

are Part, bath at any Time before consented, without revoking the same after by the like universal Agreement: Wherefore, as any Man's Deeds past is good, as long as himself continueth; so the Act of a public Society of Men, done five hundred Years sitbence, standeth as theirs who presently are of the same Societies, because Corporations are immortal; we were then alive in our Predecessors, and they in their Successors do still live. Laws therefore humane of what kind soever are available by Consent, &c.

And again, but what Matter the Law of Nations doth contain, I omit to search; the Strength and Virtue of that Law is such, that no particular Nation can lawfully Prejudice the same by any their several Laws and Ordinances, more than a Man by his private Resolutions the Law of the whole Commonwealth or State wherein he liveth; for as Civil Law being the Act of a whole Body Politic, doth therefore over-rule each Civil Part of the same Body; so there is no Reason that any one Commonwealth of itself should to the Prejudice of another, annihilate that whereupon the whole World hath agreed.

To the same Purpose may we find the universal Agreement of all Civilians, Grotius, Puffendorf, Locke's Treat. Government, &c.

No one or more Men can by Nature challenge any Right, Liberty or Freedom, or any ease in his Property, Estate or Conscience, which all other Men have not an equally just

Claim to. Is *England* a free People? So ought *France* to be. Is *Poland* so? *Tukey* likewise, and all the *Eastern Dominion* ought to be so: And the same runs throughout the whole *Race of Mankind*.

Secondly, it is against the Common Laws of *England* which are of Force both in *England* and *Ireland*, by the *original Compact* before hinted. It is declared by both Houses of the Parliament of *England*, 1 *Jac.* cap. 1. That in the *High Court of Parliament*, all the whole Body of the Realm, and every particular Member thereof, either in Person or by Representation (upon their own free Elections) are by the Laws of this Realm deemed to be personally present. Is this then the Common Law of *England*, and the Birth-right of every Free-born *English Subject*? And shall we of this Kingdom be denied it, by having Laws imposed on us, where we are neither personally, nor representatively present? My Lord *Coske* in his 4th *Inst.* cap. 1. saith, that all the Lords Spiritual and Temporal, and all the Commons of the whole Reaim, ought ex Debito Justiciæ to be summoned to Parliament, and none of them ought to be omitted. Hence it is called *Generale Concilium* in the Stat. of *Westminst.* 1. and *Commune Concilium*, because it is to comprehend all Persons and Estates in the whole Kingdom. And this is the very Reason given in the Case of the *Merchants of Waterford* foregoing, why Statutes made in

in *England*, should not bind them in *Ireland*, *Quia non habent Milites hic in Parlamento*; because they have no *Representatives* in the Parliament of *England*. My Lord *Hobbard*, in the Case of *Savage* and *Day*, pronounced it for Law, that whatever is against natural Equity and Reason, is against Law; nay, if an Act of Parliament were made against natural Equity and Reason, that Act was void. Whether it be not against Equity and Reason that a Kingdom regulated within itself, and having its own Parliament, should be bound without *their Consent*, by the Parliament of another Kingdom, I leave the Reader to consider. My Lord *Cooke* likewise, in the first Part of his *Institutes*, fol. 97. b. faith, *Nihil quod est contra Rationem est Licitum*. And in the old *Modus tenendi Parliamenta* of *England*, said to be writ about *Edward the Confessor's Time*, and to have been confirmed and approved by *William the Conqueror*: It is expressly declared, that all the *Lords Spiritual and Temporal, and the Knights, Citizens, and Burgeſſes* ought to be summoned to Parliament. The very same is in the *Modus* sent into *Ireland* by *Henry the Second*. And in King *John's Great Charter* dated 17 *Johannis*, it is granted in these Words, *Et ad babend. Commune Concilium Regni de Auxiliis & Scutagiis Affidendis, submoneri faciemus Archiepiscopos, Episcopos, Abbates, Comites & Majores Barones, Regni Sigillatim per Literas nostras*

nostras & faciemus submoneri in general per Vicecomites omnes alios, &c. Math. Paris ad An. 17. Johann. All are to be summoned to Parliament, the *Nobility* by special Writs; the *Commons* by general Writs to the Sheriffs. And is this the *Common Law of England*? Is this Part of those *Liberæ Confuetudines*, that were contained in the Great *Charter of Liberties* of the People of *England*; and were so solemnly granted by *Henry the Second*, King *John*, and *Henry the Third*, to the *People of Ireland*, that they should enjoy and be governed by; and unto which they were sworn to be obedient? And shall they be of Force *only in England*, and not in *Ireland*? Shall *Ireland* receive these *Charters of Liberties*, and be no Partakers of the Freedoms therein contained? Or do these Words signify in *England one Thing*, and in *Ireland no such Thing*? This is so repugnant to all natural Reason and Equity that I hope no rational Man will contest it: I am sure if it be so, there is an End of all Speech amongst Men; all Compacts, Agreements and Societies are to no purpose.

Thirdly, it is against the Statute Laws both of *England* and *Ireland*: this has been pretty fully discussed before; however, I shall here again take Notice, that * in the 10th of *Henry the Fourth*, it was enacted in *Ireland*, that

* See before page 65.

Statutes made in *England* should not be of Force in *Ireland*, unless they were allowed and published by the Parliament of *Ireland*. And the like Statute was made the 29th of *Henry the Sixth*. And in the 10th Year of *Henry the Seventh*, Chap. 23. *Irish Statutes*, the Parliament which was held at *Drogheda*, before Sir *Christopher Preston*, Deputy to *Jasper Duke of Bedford*, Lieutenant of *Ireland*, was declared void, for this Reason amongst others, *that there was no general Summons of the said Parliament to all the Shires, but only to four*. And if Acts of Parliament made in *Ireland* shall not bind that People, because some Counties were omitted; how much less shall either their Persons or Estates be bound by those Acts made in *England*, whereat no one County, or Person of that Kingdom is present? In the * 35th of *Edward the First*, Cap. 6. It was enacted by the Parliament of *England* in these Words, *Moreover from henceforth we shall take no manner of Aid, Taxes or Prizes, but by the common Assent of the Realm*†. And again, in the *Statute of Liberties*, by the same King, Cap. 1. *De Tallag. non Concedend.* it is enacted in these Words, *No Tallage or Aid shall be taken or levied by us, or our Heirs, in our Realm, without the good Will and Assent of*

* Pulton's Col. *Eng. Stats.* Edit. 1670. page 63.

† *Ibid* page 75.

Archbishops, Biskops, Earls, Barons, Knights, Burgeffes, and other Freemen of the Land. The like Liberties are specially confirmed to the Clergy*, the 14th of Edward the Third, and were these Statutes, and all other Statutes and Acts of the Parliament of *England* ratified, confirmed and adjudged by several Parliaments of *Ireland* to be of Force within this Realm? And shall the People of *Ireland* receive no Benefit by those Acts? Are those Statutes of Force in *England* only? And can they add no Immunity or Privilege to the Kingdom of *Ireland*, when they are received there? Can the King and Parliament make Acts in *England* to bind his Subjects of *Ireland* without their Consent? And can he make no Acts in *Ireland* without their Consent; whereby they may receive any Privilege or Immunity? This were to make the Parliaments of *Ireland* wholly illusory and of no effect. If this be reasonable Doctrine, to what end was *Poyning's Law* in *Ireland*†, that makes all the Statutes of *England* before that in Force in this Kingdom? This might as well have been done, and again undone when they please, by a single Act of the English Parliament. But let us not make thus light of Constitutions

* *Ibid* page 113.

† 10 H. 7. c. 22.

of Kingdoms, it is dangerous to those who do it, it is grievous to those that suffer it.

Moreover, had the King or his Council of *England*, in the 10th Year of *Henry the Seventh*, in the least dreamt of this Doctrine, to what end was all that strict Provision made by *Poyning's Act*, Irish Stat. cap. 4. That no Act of Parliament should pass in *Ireland*, before it was first certified by the chief Governor and Privy Council here, under the broad Seal of this Kingdom, to the King and his Privy Council in *England*, and received their Approbation, and by them be remitted hither under the broad Seal of *England*, here to be passed into a Law? The Design of this Act seems to be the Prevention of any Thing passing in the Parliament of *Ireland* surreptitiously, to the Prejudice of the King, or the English Interest of *Ireland*. But this was a needless Caution, if the King and Parliament of *England* had Power at any Time to revoke or annul any such Proceedings. Upon this Act of *Poyning's* many and various Acts have passed in *Ireland* relating to the Explanation, Suspension, or farther Corroboration thereof in divers Parliaments, both in *Henry the Eighth's*, *Phil. & Mary's*, and *Q. Eliz.* Reigns; for which see the Irish Statutes*.

* 28 H. 8. c. 4. 28 H. 8. c. 20. 3 & 4. Ph. & M. c. 4.
11 Eliz. Sess. 2. c. 1. 11 Eliz. Sess. 3. c. 8.

All which shew that this *Doctrine* was hardly so much as *surmised in those Days*, however we come to have it raised in these *latter Times*.

Fourthly, it is against several *Charters of Liberties* granted unto the Kingdom of *Ireland*: This likewise is clearly made out by what foregoes. I shall only add in this Place, that in the Patent-Roll of the 17 Rich. 2. m. 34. *de Confirmatione*, there is a Confirmation of several *Liberties* and *Immunities* granted unto the Kingdom and People of *Ireland* by *Edward the Third*. The Patent is somewhat long, but so much as concerns this Particular, I shall render *verbatim*, as I have it transcribed from the Roll by Sir *William Domvile*, Attorney General in *Ireland* during the whole Reign of King *Charles the Second*.

“ Rex omnibus, &c.
“ Salutem: Inspeximus Literas Patentes
“ Domini Edwardi nuper Regis Angliæ,
“ Avi nostri fact. in hæc verba: Edwar-
“ dus dei Gra. Rex Angliæ & Franciæ, &
“ Dominus Hiberniæ, Archiepiscopis, Epif-
“ copis, Abbatibus, Prioribus, Ministris
“ nostris tam Majoribus quam Minoribus,
“ & quibuscumque aliis de Terra nostra
“ Hiberniæ fidelibus nostris ad quos Præ-
“ sentes Literæ pervenerint, Salutem: Quia,
“ &c. Nos hæc quæ sequuntur Ordinanda
“ Duximus & firmiter observanda, &c.
“ Imprimis, viz. Volumus & Præcipimus
“ quod

“ quod Sancta Hibernicana Ecclesia suas
“ Libertates & Liberas Consuetudines ille-
“ fas habeat, & eis Libere gaudeat & Uta-
“ tur. Item volumus & præcipimus quod
“ nostra & ipsius Terræ Negotia præsertim
“ Majora & Ardua in Consiliis per Peritos
“ Confiliaros nostros ac Prælatos & Magna-
“ tes & quosdam de Discretioribus & Pro-
“ bioribus Hominibus de partibus vicinis
“ ubi ipsa Concilia teneri Contigerit propter
“ hoc evocandos, in Parliamentis vero per
“ ipsos Conciliaros nostros ac Prelatos & Pro-
“ ceres aliosque de terra prædicta prout Mos
“ Exegit secundum Justiciam Legem Confue-
“ tudinem & Rationem tractentur dedu-
“ cantur & fideliter timore favore odio aut
“ prætio post positis discutiantur ac etiam
“ terminentur, &c. In Cujus Rei Testimo-
“ nium has Literas nostras fieri fecimus
“ Patentes Teste meipso Apud Westminst.
“ 25 die Octob. Anno Regni nostris Angliæ,
“ 31, Regni vero Franciæ 18. Nos autem
“ Ordinationes Voluntates & Præcepta Præ-
“ dicta ac omnia alia & singula in Literis
“ prædictis Contenta Rata Habentes &
“ Grata eo pro nobis & Hæredibus nostris
“ quantum in nobis est Acceptamus, Ap-
“ probamus, Ratificamus, & Confirmamus
“ prout Literæ predictæ rationabiliter tes-
“ tanter. In Cujus, &c. Test. Reg. apud
“ Westminst. 26 die Junii.”

Fifthly,

Fifthly, it is inconsistent with the *Royalties* and *Præ-eminence* of a *separate* and *distinct* Kingdom. That we are thus a *distinct* Kingdom, has been clearly made out before. It is plain, the Nobility of *Ireland* are an Order of Peers clearly distinct from the Peerage of *England*, the Privileges of the one, extend not into the other Kingdom; a Lord of *Ireland* may be arrested by his Body in *England*, and so may a Lord of *England* in *Ireland*, whilst their Persons remain sacred in their respective Kingdoms: A *Voyage Royal* may be made into *Ireland*, as the Year-Book, 11 Henry 4. 17 Fol. 7. and Lord *Cook* tells us; and King *John*, in the 12th Year of his Reign of *England*, made a *Voyage-Royal* into *Ireland*; and his Tenants in Chief, which did not attend him in that Voyage, did pay him *escuage*, at the Rate of two Marks for every *Knight's Fee*; which was imposed *super Prælatis & Baronibus pro Paj-sagio Regis in Hibernia*, as appears by the Pipe-Roll, Scutag. 12 *Johannis Regis in Scaccario Angl.* which shews that we are a *compleat Kingdom* within ourselves, and not little better than a *Province*, as some are so extravagant as to assert; none of the Properties of a *Roman Province* agreeing in the least with our Constitution. It is resolved in Sir *Richard Pembrough's Case*, in the 44th of *Edward the Third*, that Sir *Richard* might lawfully refuse the King to serve him as his
Deputy

Deputy in Ireland, and that the King could not compel him thereto, for that were to banish him into another Kingdom, which is against *Magna Charta*, Chap. 29. Nay, even though Sir Richard had great Tenures from the King, *pro servitio Impenso & Impendendo*, for that was said must be understood within the Realm of England, *Cook's 2d Inst.* page 47. And in *Pilkington's Case* aforementioned, *Fortescue* declared, that the Land of *Ireland* is, and at all times hath been, a *Dominion separate and divided from England*. How then can the Realms of *England* and *Ireland*, being *distinct Kingdoms*, and *separate Dominions*, be imagined to have any *Superiority or Jurisdiction* the one over the other. It is absurd to fancy that Kingdoms are *separate and distinct* merely from the *geographical Distinction of Territories*. Kingdoms become *distinct*, by *distinct Jurisdictions*, and *Authorities legislative and executive*; and as *Rex est qui Regem non habet*, so *Regnum est quod alio non Subjicitur Regno*: A Kingdom can have no *supream*; it is in itself supream within itself, and must have all *Jurisdictions, Authorities and Præ-eminenties* to the Royal State of a Kingdom belonging, or else it is none: And that *Ireland* has all these, is declared in the *Irish Stat. 33 Henry the Eighth, c. 1.* The chief of these most certainly is, the *Power of making and abrogating its own Laws*, and being bound only by such

such to which the *Community* have given their *Consent*.

Sixthly, it is *against the King's Prerogative*, that the Parliament of *England* should have any co-ordinate Power with him to introduce new Laws, or repeal old Laws established in *Ireland*. By the Constitution of *Ireland* under *Poyning's Act*, the King's Prerogative in the Legislature is advanced to a much higher Pitch than ever was challenged by the Kings in *England*, and the Parliament of *Ireland* stands almost on the same Bottom as the King does in *England*; I say *almost* on the same Bottom, for the *Irish* Parliament have not only a *negative Vote* (as the King has in *England*) to whatever Laws the King and his Privy Councils of both or either Kingdom shall lay before them; but have also a Liberty of *proposing* to the King and his Privy Council here, such Laws as the Parliament of *Ireland* think expedient to be passed. Which Laws being thus proposed to the King, and put into form, and transmitted to the Parliament here, according to *Poyning's Act*, must be passed or rejected in the *very Words*, even to a *Tittle*, as they are laid before our Parliament, we cannot alter the least *Iota*. If therefore the Legislature of *Ireland* stand on this foot, in relation to the King, and to the Parliament of *Ireland*; and the Parliament of *England* do remove it from this Bottom, and assume

sume it to themselves, where the King's Prerogative is much *narrower*, and as it were *reversed*, (for there the King has only a *negative Vote*) I humbly conceive it is an *Encroachment* on the Kings *Prerogative*: But this I am sure, the Parliament of *England* will be always very tender of, and his Majesty will be very loth to have such a precious Jewel of his Crown handled roughly. The Happiness of our Constitutions depending on a right Temperament between the Kings and the *Peoples Rights*.

Seventhly, it is *against the Practice of all former Ages*. Wherein can it appear, that any Statute made in *England*, was at any Time since the Reign of *Henry the Third*, allowed and put in Practice in the Realm of *Ireland*, without the *Authority* of the *Parliament of Ireland*? Is it not manifest by what foregoes, that from the Twentieth of King *Henry the Third*, to the Thirteenth of *Edward the Second*, and from thence to the Eighteenth of *Henry the Sixth*, and from thence, to the Thirty-second of *Henry the Sixth*, and from thence to the Eighth of *Edward the Fourth*, and from thence, to the Tenth of *Henry the Seventh*, there was special care taken to introduce the Statutes of *England* (such of them as were necessary or convenient for this Kingdom) by degrees, and always with *Allowance* and *Consent* of the *Parliament and People of Ireland*. And since

since the general *Allowance*, of all the English Acts and Statutes in the Tenth of *Henry the Seventh*, there have several Acts of Parliament, which were made in *England* in the Reigns of all the Kings from that Time, successively to this very Day, been particularly received by Parliament in *Ireland*, and so they become of Force here, and not by Reason of any general comprehensive Words, as some Men have lately fancied. For if by general comprehensive Words, the Kingdom of *Ireland* could be bound by the Acts of Parliament of *England*, what needed all the former Receptions in the Parliament of *Ireland*, or what Use will there be of the Parliament of *Ireland* at any Time? If the Religion, Lives, Liberties, Fortunes, and Estates of the Clergy, Nobility and Gentry of *Ireland*, may be disposed of, without their *Privity* and *Consent*, what Benefit have they of any Laws, Liberties, or Privileges granted unto them by the Crown of *England*? I am loth to give their Condition an hard Name; but I have no other Notion of *Slavery*, but being bound by a Law to which I do not Consent.

Eighthly, it is against several *Resolutions* of the learned *Judges* of former Times in the very Point in Question. This is manifest from what foregoes in the Case of the *Merchants of Waterford*, *Pilkington's Case*, Prior of *Lanthony's Case*, &c. But I shall not here enlarge farther thereon.

Ninthly,

Ninthly, The Obligation of all Laws having the same Foundation, if *one* Law may be imposed without *Consent*, any other Law whatever may be imposed on us without our *Consent*. This will naturally introduce *taxing us without our Consent*; and this as necessarily destroys our *Property*. I have no other Notion of *Property*, but a *Power of disposing my Goods as I please*, and not as another shall command: Whatever another may *rightfully* take from me without my *Consent*, I have certainly no *Property* in. To *tax me without Consent*, is little better, if at all, than *down-right robbing me*. I am sure the great Patriots of Liberty and Property, the free People of *England*, cannot think of such a Thing but with abhorrence.

Lastly, The People of *Ireland* are left by this Doctrine in the greatest *Confusion* and *Uncertainty* imaginable. We are certainly bound to obey the *supreme Authority* over us; and yet hereby we are not permitted to know *who or what* the same is; whether the *Parliament of England*, or *that of Ireland*, or *both*; and in what Cases the *one*, and in what the *other*: Which *Uncertainty* is or may be made a Pretence at any Time for *Disobedience*. It is not impossible but the different Legislatures we are subject to, may enact different or contrary *Sanctions*: Which of these must we obey?

To conclude all, I think it highly *inconvenient* for *England* to *assume* this *Authority* over the Kingdom of *Ireland*: I believe there will need no great Arguments to convince the wise Assembly of *English* Senators, how *inconvenient* it may be to *England*, to do that which may make the *Lords* and *People* of *Ireland* think that they are not *well used*, and may drive them into *Discontent*. The *Laws* and *Liberties* of *England* were granted above five hundred Years ago to the *People* of *Ireland*, upon their Submissions to the Crown of *England*, with a Design to make them *easy* to *England*, and to keep them in the Allegiance of the King of *England*. How consistent it may be with true Policy, to do that which the *People* of *Ireland* may think is an *Invasion* of their Rights and Liberties, I do most humbly submit to the Parliament of *England* to consider. They are Men of great *Wisdom*, *Honour*, and *Justice*; and know how to prevent all future *Inconveniences*. We have heard great Out-cries, and deservedly, on breaking the *Edict* of *Nantes*, and other Stipulations; how far the breaking our Constitution, which has been of five hundred Years standing, exceeds that, I leave the World to judge. It may perhaps be urged, that it is *convenient* for the State of *England*, that the *Supreme Council* thereof should make their Jurisdiction as *large* as they can. But with Submission, I conceive that if

if this *assumed Power* be not *just*, it cannot be *convenient* for the State. What *Cicero* says in his *Offices*, *Nihil est Utile, nisi idem sit Honestum*, is most certainly true. Nor do I think that it is anywise *necessary* to the *Good of England*, to *assert* this High Jurisdiction over *Ireland*. For since the Statutes of this Kingdom are made with such *Cau-tion*, and in such *Form*, as is prescribed by *Poyning's Act* 10 H. 7. and by the 3d and 4th of *Phil.* and *Mar.* and whilst *Ireland* is in *English Hands*, I do not see how it is possible for the Parliament of *Ireland* to do any *Thing* that can be in the least *prejudicial* to *England*. But on the other Hand, if *England* *assume* a *Jurisdiction* over *Ireland*, whereby they think their *Rights* and *Liberties* are *taken away*; that their *Parliaments* are rendered merely *nugatory*, and their Lives and Fortunes depend on the Will of a *Legislature*, wherein they are not *Parties*, there may be ill Consequences of this. *Advancing* the Power of the Parliament of *England*, by *breaking* the *Rights* of *another*, may in Time have ill Effects.

The *Rights of Parliament* should be preserved *sacred* and *inviolable*, wherever they are found. This kind of Government, once so *universal* all over *Europe*, is now almost *vanished* from amongst the Nations thereof. Our King's Dominions are the only Supporters of this noble *Gothick Constitution*,
saye

save only what little Remains may be found thereof in *Poland*. We should not therefore make so light of that Sort of Legislature, and as it were abolish it in one Kingdom of the Three, wherein it appears; but rather cherish and encourage it wherever we meet it.

T H E E N D.